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The American
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DEMOCRATIC REALITIES AND DEMOCRATIC DOGMA

JOHN DICKINSON
University of Pennsylvania Law School

I

Not long ago, a distinguished political scientist called attention to "the law of the pendulum" in politics. No sooner, he argued, does a broad political tendency establish itself than tendencies of opposite direction set in and gather force until the original tendency is reversed. As applied to relatively short periods of time and to movements which reflect temporary trends, a plausible case can be made out for the law of the pendulum. It seems doubtful, however, whether it can be proved with like plausibility for tendencies which are truly secular. Take as an example the steady trend toward enlarging the size of the independent political unit, or state. Since the feudal age, the tendency has run in the same direction, sometimes more slowly and sometimes more rapidly, but with seldom a check, and never a retreat, from the feudal state to the national state, from the national state to the colonial empire, and in recent years from the colonial empire toward some larger goal of world organization. Barring accidental destruction of modern machine civilization, a recurrence to a world of petty states seems unthinkable.

Whether or not the law of the pendulum applies in the world of political events, there can be no doubt of its sway over political thought. No sooner does a doctrine embody itself in an

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institution than it exposes its nakedness in a pillory and challenges competing dogmas to do their worst. In consequence, the history of political ideas has been a story of oscillations, of attack and repulse and counter-attack. The dominant thought of one era exerts itself to achieve a political result; in the next, the shortcomings of the achievement invite audacious thinkers to insult an enthroned idol by unfavorable comparisons with old gods which it has displaced. If events were perfectly responsive to ideas, the law of the pendulum in the field of thought would doubtless reproduce its influence violently and catastrophically in the world of fact. But facts are resistant; so that, apart from temporary vacillations within broad currents of change, the oscillations of theory are mainly effective in slowing down political trends, checking them by comparison with their opposites, and thus preventing new advances from losing touch with values embodied in the past. Theories have a way of tending toward absolutes; the dominant absolute which would hurry forward development too far or too fast induces a competing absolute which supplies the saving abrasive sand of criticism.

We should have reservations such as these in mind when we seek to assess the supposed trend in recent years away from democracy. In the field of thought, as we might expect, there has been undeniable reaction from the democratic dogma. Beginning as early as Carlyle, and certainly with Nietzsche, the chorus of anti-democratic opinion has risen, or descended, as one chooses to regard it, through writers like Maine, Lecky, Faguet, Henry Adams, and Spengler, to the authors of such incisive recent books as William Kay Wallace's *Passing of Politics*. Opinion has a way of keeping its courage up by faith that the facts are fighting on its side, and hopefully scans the horizon for evidence to support that faith. Such evidence, or what can be cited for it, has come in abundance in the aftermath of the war. The war which was supposed to make the world safe for democracy has perversely resulted, we are told, in a general retreat along the democratic front. Personal

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dictatorships have sprung up in Italy, Spain, Poland, Turkey, Hungary, and Jugoslavia with a simultaneousness which suggests some single all-embracing cause. Meanwhile government by the parliamentary methods of democracy is elsewhere breeding discontent as being unequal to the complex demands of the modern world. Signs and portents are observed in each successive French cabinet crisis of an impending surrender by France to the rule of a strong man. What is such evidence worth toward proving recession of the democratic trend? Do the facts indicate that dictatorship is on the way to supplant democracy?

Fairly assessed, they can scarcely be held to do so. With the exception of Italy and Spain, all the new dictatorships have risen on the ruins of old states shaken down by the war, states which by no stretch of imagination could be called democratic. To expect that Turkey, Poland, Russia, or the succession states of Austria should suddenly by the miracle of war develop orderly and efficient popular governments is the result of the same sophomoric optimism which at the close of our own Civil War expected good government from the liberated negro majorities in the reconstructed South, and which still attributes misrule in Caribbean countries to the malice of dictators. The cases of Italy and Spain are not greatly different. There is sound reason for suspecting that even before the war democracy in Spain or Italy was not the rooted and established and functioning thing that it is in France or England. France herself had to grow up to democracy through at least two interludes of personal absolutism, and Italy when she succumbed to Mussolini was no farther away from the old régime of Hapsburg and Bourbon than France when she enthroned Napoleon III. It is therefore too early to say that Italy or Spain has abandoned democracy. Quite as likely, both are only undergoing temporary relapse in their progress along the difficult road toward it.

Meanwhile there are some tremendous items which have to be set down on the credit side of democracy's account. The

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new popular government of Czechoslovakia has proved capable of weathering the most exacting and delicate of all crises, a crisis between church and state in a country where religious allegiance is divided, and where religious feeling runs consequently to high levels of bitterness. The transformation of autocratic Germany into a stable republic under the presidency of von Hindenburg is one of the spectacular miracles in the long story of the democratic advance. Nor should we minimize the success of established popular governments like those of France and England in finding working solutions for the most pressing of the extremely novel and complex issues growing out of the war. Whatever judgment we may pass on the right or wrong, the wisdom or unwisdom, of any particular policy of the French or British or American government in liquidating the war, we must in fairness admit that solutions have been reached and reached peaceably, that they have been peaceably acquiesced in, that order has been kept and the normal functions of government have gone on, under circumstances which might easily have led to bankruptcy and anarchy. There is no ground but blind faith for supposing that personal absolutism could have done better; history and Mussolini suggest that the tightening up of internal discipline might have been bought at the price of increased international tension.

On the whole, then, what recent years have shown is not that democracy has failed, not that it is on the way to being supplanted by some other and more disciplined type of government, but that it has succeeded reasonably where it has long been working; and that in countries to which it has been freshly transplanted, it has succeeded in some and failed to take root in others. In other words, what the great experiment performing itself in the world laboratory of politics seems to suggest is that the success or failure of democracy is a relative thing, dependent on what is expected of it, on the tools put at its disposal, and on the circumstances and environment in which it is asked to do its work.

If the facts thus lend small comfort to theorists who are con-

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ducting a frontal onslaught on democracy, they give food for thought to all who have held the democratic dogma in some of its more sweeping forms. Believers in democracy have too often assumed that it is a universal kind of government for all times and places; that it needs only to be established in order to justify itself; that it is something to which every people have a "right," irrespective of their equipment for it or the uses they make of it. Furthermore, there is generally an assumption that democracy means some special model of governmental mechanism—"parliamentary" government, for example, or direct legislation by initiative and referendum, or government by a multiplicity of directly elected officials as in the American states. This assumption seems even more widely held by foes than by friends of democratic government, with the result that most criticisms of democracy come down in the last analysis to discontent with some special model of democratic institutions. By a kind of misplaced metonomy, the part is taken for the whole.

If a sufficiently broad conception of democracy could be agreed on, it might well turn out that those accepting democracy in such a sense could admit all or most of what the critics have to say, and remain good democrats still. Indeed, in so far as the severest criticisms of democracy are directed to specific institutional defects which can be corrected, the critics are performing a service which should be welcomed by all who feel that no acceptable substitute for democracy has been suggested, or is possible, in advanced political societies. Perhaps the chief contribution to political progress in the years since the war has been to emphasize the need for a reassessment of what political democracy means.

II

It seems not too much to say that the greatest present foe of democracy, the thing which most stands in the way of its success and effectiveness, is the democratic dogma, or stereotype, as it has hardened in the minds of everyday men and practical

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political leaders accustomed to take their opinions without analysis from the air about them. Like all stereotypes, it is composed of elements which came originally into existence in response to some practical problem, but which for convenience of transmission have packed and smoothed themselves into formulas too brief to carry necessary qualifying limitations, and which therefore invite combination into logical patterns more and more remote from reality. A system of democratic theology has grown up; and the temptation to take it seriously and apply it literally can be held responsible for many, if not most, of the things which bring democracy into disrepute.

The first and broadest tenet of this theology is that in a democracy "the people rule." This is explained by saying that while in many matters of government it is obvious that the "people" cannot act directly, they choose by election the officials who are to act in their place and name, and by this process preserve such direct and immediate control over government that its actions are guided by the popular will, or as it is now more fashionable to say, by "public opinion." The keystone of this doctrine is the assumption that there exists in every political society a "will of the people" which declares itself at elections and operates through the instrumentality of elected officials; and it is thought to be the object of democracy to see that this "popular will" gets itself translated into governmental action, and that governmental action is determined by nothing else. The whole theory and strategy of the democratic movement is generally directed toward this single objective; by it is tested the worth of governmental mechanisms, to the almost complete exclusion of other standards of good government. One of the principal grounds of attack on democratic institutions is that they do not achieve this aim—that instead of ensuring that governmental action shall be guided solely by the popular will, they permit it to take its direction from the will of small groups or special interests.

Most advocates of democratic government admit the justice of such charges and busy themselves with promoting institu-

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tional readjustments to prevent government from responding to any other force than the will of the people. Hence, for example, the movement a few years ago in the American states for direct legislation by initiative and referendum; hence direct primaries for nominating candidates for office; hence the "recall" of officials, and schemes for proportional representation. The cure for the ills of democracy is thought to be more democracy, in the sense of increasing the number of points at which the electorate can bring its "will" to bear on the organs of government. But even after the adoption of such reforms, there is an aspect of the result which disquiets the reformers. Increase in the number of opportunities for the manifestation of the popular will means increase in the number of elections; and increase in the number of elections has been found to mean a steady decline in the proportion of the electorate taking part in the voting. Can an election in which only a minority participate be said to express the "popular will"? Does not government guided by the results of such an election represent government by a minority group rather than by "the will of the people"? There seems to be an uneasy feeling that it does, and that there is therefore something wrong about it; hence frantic campaigns to "get out the vote," and even occasional proposals for compulsory voting.

Probably most believers in democracy would be ready to admit that some of the devices for securing larger opportunity for the popular will to influence governmental action have been purchased at the cost of very real inconveniences and sacrifices from the standpoint of competent government. And, in the end, the question remains whether the sacrifices have been worth what they cost—whether they have in fact rendered government more responsive to the will of the people as distinguished from the will of some special group. In most instances they seem only to have stimulated or brought into existence some new type of group control. Thus the multiplicity of elections to minor offices is more than anything else responsible for those compact political "machines" which have permanently

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appropriated the management of many local governments in this country. Direct legislation by initiative and referendum and the direct primary have enormously enhanced the importance and power of organized propagandist agencies. All in all, it seems paradoxically true that the more efforts are made to elicit and give effect to the will of the people, the more power is placed in the hands of special groups and interests.

The reason for this paradox lies at the heart not only of the problem of democracy but of the whole wider problem of government. Significant light was shed on it in some recent remarks of Judge Learned Hand before the American Law Institute. Judge Hand was speaking of the traditional theory that law is the product of a common, or popular, will. "To me," he said, "this doctrine seems to ignore the facts..... Until something is so irritating as to tease men into action, they go along with what is usual, not consciously accepting it, having no opinion and therefore no will about it..... For many ages men lived without being able to change the traditional codes which regulated their lives..... In civilized times we have acquired that power; we set up officials who innovate, and when they do, we call it our common will at work..... Sometimes we speak of the judges as representing a common will, but they are not charged with power to decide the major conflicts. We think of the legislature as the place for resolving these, and so indeed it is. But if we go further and insist that there at any rate we have an expression of a common will, we should be wrong again. I will not, of course, deny that there are statutes of which we can say that they carry something like the assent of a majority. But most legislation is not of that kind; it represents the insistence of a compact and formidable minority. Nor are we to complain of that, for while we may be right to say that the problem of democracy lies in minorities, we are not to suppose that the bulk of government can go on on any other terms..... So far as we can forecast the future, it is more likely to see an increase in minority rule. The truth appears to be that what we mean by common will is that there shall be an available peaceful way

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by which law may be changed when it becomes irksome to enough powerful people who can make their will effective. We may say if we like that meanwhile everybody has consented, but this is a fiction. They have not; they are merely too inert or too weak to do anything about it.'"[1]

The central insight which emerges from this discussion of law applies to the whole field of government. It is the insight that, after all, the larger number of members of any political society have no opinion, and hence no will, on nearly all the matters on which government acts. The only opinion, the only will, which exists is the opinion, the will, of special groups.

It would therefore seem that the democratic movement, in concentrating on the realization of a supposed popular will, is offering vain oblations to a metaphysical specter. "Realization of the popular will" is a formula which by methods of easy logic may be proved to dictate any number of hopeful panaceas; but none of them gives satisfaction, because the goal itself is illusive. If the time should come when this illusion was dispelled, the result might well be a general breakdown of faith in the whole idea of democratic government. Such a result would be a signal illustration of the mischievous power of ideology in diverting attention from the real and substantial issues of what is a practical and not a metaphysical problem. The task of government, and hence of democracy as a form of government, is not to express an imaginary popular will, but to effect adjustments among the various special wills and purposes which at any given time are pressing for realization.

III

Almost the whole range of political problems are problems of what may be called adjustment—of devising ways and means to curb particular "wills" or "interests," and thus clear the track for the realization of other wills and interests in fuller measure. This is the task of governmental decisions ranging in importance from where to locate a new street or sewage-

[1] 28 *Michigan Law Rev.* 46-50.

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disposal plant to whether or not to go to war. Government, from this point of view, is primarily an arbitrator, and since practically every arbitration must result in giving to one side more of what it thinks it ought to have than the other side is willing to admit, every governmental act can be viewed as favoring in some degree some particular and partial "will," or special interest. It is therefore meaningless to criticize government, whether democratic or not, merely because it allows special interests to attain some measure of what they think themselves entitled to. The question is rather whether it allows the "right" side, the "right" special interest, to win; and the "right" special interest means only the one whose will is most compatible with what we, as critics, conceive to be the right direction for the society's development to take.

The skill and sanity which government displays in picking the special interest which, in any particular case, it will allow to win depends largely on what kind of government it is—on the organs through which it works, and on their relation to one another and to the community. The simplest and almost the oldest type of government commits the power of making decisions to a single supposedly impartial individual, a monarch, subject to no constitutional restraints and free to make his choices on the advice of such councillors and on the basis of such considerations as he is personally inclined to take account of.

The effectiveness of "absolute" government of this kind as a permanent form of government is limited to relatively simple or loosely integrated societies, or to societies whose internal structure of customs, ideas, social classes, is rigid and stable. Where a society in its normal condition embraces a wide variety of competing interests of approximately equal strength, which are pressing restlessly and aggressively against one another, it is next to impossible for an absolute ruler, unless in possession of overwhelming military force, to avoid causing dissatisfaction among so many elements as to destroy his authority. In such a society, if military force is in-

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compatible with the economic processes in which the life of the society consists, and if there exists on the part of the various elements a solid conviction that they must go on living together, a type of government is required through which the conflict of interests can result in compromises, and in compromises, furthermore, whose necessity is brought directly home to the warring interests themselves in a way not possible where responsibility for every unfavorable decision can be shouldered on the ruler and undermine the confidence on which his authority rests. There thus emerges the advantage of government containing what we may call the democratic element—of government, that is, whereby the conflicting interests in a community will themselves be made to bear some part of the responsibility for reaching through political action the adjustments by which they are expected to abide.

This may be something quite different from pure democracy, or government by mass-meeting, which is almost as archaic a governmental type as pure monarchy. Under pure democracy there is merely substituted for the individual ruler a mass-meeting of the entire citizen-body as the supposedly impartial third-party to decide disputes. On some questions, opinion in such a mass-meeting may be unanimous, so that its decision will give practically universal satisfaction. A second type of questions consists of relatively unimportant disputes about which practically no member of the assembly has or can have any opinion until he has heard the case presented and the arguments advanced for the respective sides. In such instances the verdict of a majority may be acquiesced in for substantially the reasons for which a jury verdict is today accepted in rural communities. In a third class of questions, there may be a considerable group in the meeting committed from the outset to the opposing sides, but also an impartial element ready and willing as in the second case to be persuaded by argument, and to divide its support as its several members feel themselves convinced one way or the other. Finally, on certain questions the entire membership may be divided at the outset into two

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camps, one firmly committed to one side of the question and the other to the opposite. In a primitive democracy an issue of the latter character is almost certain to lead to civil war.

Inside the limits within which it is possible in a modern state to submit the decision of political measures directly to the electorate, almost all cases are likely to fall within the third or fourth of these categories. Complete unanimity is never attainable, nor is a question important enough to be submitted until substantial portions of the electorate are already committed to the opposing sides. Either, then, there will be an impartial residue of voters in whose hands the decision will rest after hearing argument, or the outcome will depend on merely counting the noses of partisans substantially committed before the launching of the campaign.

Granting that a considerable portion of a widely diffused electorate may be impartial, it remains impossible to present to them the merits of a complicated political measure in the same way in which a relatively simple issue can be presented to a mass-meeting or a jury. Some members cannot be reached, and others refuse to take any interest or action in the whole affair. On a large number of questions, few will share in the voting except those who from the outset have been pronounced partisans. Where a question is thus decided exclusively or mainly by votes not open to argument, there is danger that the decision may not be treated with great respect by the defeated side. The process of decision amounts, or at least appears to amount, to a mere matching of opposites without opportunity for that give and take and mutual adjustment of claims which an independent arbitrator would bring about. There is room for the criticism that a decision so arrived at does not include the all-important element of impartiality; and there is the added likelihood that the decision will be reached on a basis of ignorance and prejudice by persons incapable of estimating what the results of their action will be.

In practice, it is, of course, not these considerations which prevent the larger number of governmental acts from being

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submitted to direct popular vote in even the most advanced modern democracies. The sufficient practical reason is the sheer impossibility of calling on the electorate to give attention to any but a very few governmental decisions. Not merely the routine of government, therefore, but most decisions on important questions of policy necessarily have to be made by officials, and by officials who, while they may be elected by the people, are still "independent" in the sense that they must make choices of their own without being able to rely at every step for rule and guidance on specific orders formulated by the electorate. The interposition of such a body of governing officials between the "people" and the mass of political decisions offers a means of correction for some of the defects of direct decision by the electorate.

IV

Government by elected representatives ordinarily affords opportunity for practically every interest of importance in the community to find somewhere in the representative assembly a spokesman to voice its claims. It is possible for these representatives to meet and work under circumstances making for the mutual understanding of different points of view and for the attainment of compromises designed to provide for the future of all interests in the community important enough to take account of. Conflicting interests, instead of standing apart and testing their numerical strength at the polls, are supplied with means for coming into contact, consultation, and adjustment in a way that can conceivably allow something to each. Each may have some share in moulding the adjustment and consequently be supplied with a motive for abiding by it. Every representative is a potential mediator for the interest which has the strongest control over him in the face of other interests; and in this way opportunity is given for bringing interests into touch and convincing each of the advantage of accommodating itself to the others with which it has to live. These are the substantial merits of representative democracy

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—these, and not the realization of a supposed "popular" will.

The extent to which any particular representative government realizes the full possibilities of the system depends on its form of organization and on the state of affairs in the society in which it works. So far, for example, as its design is merely to reproduce as closely as possible the results which might be expected from direct democracy, it will reproduce the political defects of the latter. Thus, for example, an organization of the representative assembly which results in the firm and permanent attachment of each representative to some single interest or group is bound to make him relatively ineffective as an organ of conciliation with other interests. At the peril of his own position, he must insist to the limit on the claims of the interest which owns him; he is not at liberty to use his more intimate acquaintance with other interests to devise compromises, since if he does so he runs the risk of being repudiated by his own people. A representative assembly organized on this principle inevitably becomes factionalized, as has been the case, for example, with our American Congress; the pressure of interests outside is simply reproduced within, and no substantial facilities for mutual accommodation are added. In consequence, the clash of interests, instead of leading to understanding, prolongs itself with a futility which disgusts observers who would like to see issues brought to settlement; while such decisions as are arrived at are frequently due only to the outside driving power of lobbyists, and result from a mere matching of numbers which breeds no confidence in their justice or wisdom.

An important factor making for the effectiveness of representative government is that within such a group as a representative assembly it is possible to develop a central organ to aid in making adjustments between the representatives and to take the lead in devising and carrying through programs to harmonize the claims of the different interests represented. Such an organ performs on a higher plane for the assembly the function which the assembly in a broader and less definite

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way performs for the community at large. It supplies leadership, which is the active and authoritative force making for the invention of adjustments and investing them with the quality of commanding respect. This kind of organization has been achieved most completely in so-called "cabinet government" as it has developed in England. The cabinet, after taking account of the temper and disposition of the various parts of the community, accepts the duty of working out a plan of adjustment which consciously undertakes to meet the most outstanding differences between interests in a manner to win at least temporary acceptance by most of them. It is independent enough, and occupies a post of sufficient prestige, to promote adjustments which an ordinary representative, concerned mainly with the narrow affairs of his own constituency, might hesitate or fear to do. At the same time, its proposals are subject to the double check of being rejected by the assembly and repudiated at the polls.

Such an organization of government puts a meaning into the choice of representatives which elections do not always have. It enables the electors to express simple satisfaction or dissatisfaction with a program holding together as a unit, to say whether or not they are content that it shall be carried out, or that an alternative shall be put in its place. This is an altogether different thing from asking them to pass directly on the merits of specific measures, often of a detailed and complicated kind. It is a different thing from asking them, as under our American system, to express approval or disapproval of the conduct of a single representative whose actions are too obscure to attract publicity. It thus succeeds better in holding the interest and attention of the voters, and sets before them a simpler task. Furthermore, the cabinet system eliminates some of the disadvantages of a decision by mere numbers, since it brings the test of numbers into play only for the purpose of passing on decisions which have already been reached as a result of a rather careful process of consultation and adjustment.

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It seems clear that cabinet government is not acceptable or adapted to all political societies. It requires for its success conditions not present in every country. This is true of representative government in general. For representative government, no less than for direct democracy, there must be a willingness on the part of conflicting interests to live together on peaceful terms and to make at least such mutual concessions as are needful for that purpose. Where this is not the case—where the cleavage between particular interests is so deep that they stubbornly refuse all concessions—no form of popular government, whether direct or representative, is possible. Such a condition is ordinarily a mark of the political immaturity of the people among whom it exists. It must end either in splitting up the state, as sometimes happens where the differences are geographical, or else in a régime of anarchy which can be suppressed only by military absolutism until the common interest of opposing oppression has welded the different elements into a unity stable enough to live and work together. In these conditions we apparently have the cause of the collapse of representative government in Jugoslavia and Italy.

Elsewhere the cleavage between interests may not be sufficiently deep to destroy the possibility of representative government, and yet be of such a nature as to make the highly unified processes of cabinet government unacceptable. The various interests may be unwilling to put themselves so completely in the hands of a supreme board of adjustment responsible only to the electorate as a whole. This is doubtless true of the United States today. Our strongly-felt interests still divide largely along geographical lines, and local feeling is still so strong among us that it insists on representing itself in a way which paralyzes effective representative government. Theoretically, there is an enormous loss in political efficiency; but in fact the situation does not produce discontent serious enough to lead to action. For effecting a progressive adjustment of many kinds of interests through the medium of politi-

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cal action, our American form of government is thoroughly ill-adapted; the reason, however, is the obvious one that no sufficient demand for such a method of adjustment exists on the part of interests influential enough to insist upon it.

V

Under the influence of democratic dogma, it often goes unrecognized that the most important problems of representative government are the ones we have been considering—problems which have to do with providing leadership so organized as to bring the different elements in a community to adjustments which they will accept as their own. Ordinarily, the emphasis in discussions of representative government is placed on an altogether different point—on the need for ensuring that every interest shall be given formal representation as such, and on schemes for apportioning the representation of each interest to its supposedly just weight. Democratic dogma cuts the Gordian knot of this complex problem with its simple formula of universal suffrage and "one man one vote"—a solution for which finality is claimed on the axiomatic basis of supposed "natural right." It is easy to see that such a solution is not only crude, but also open to the objection of committing decisions, not as a matter of mere convenience, but on grounds of essential justice, to what may be called "the ordeal of number." The same weakness is latent in more sophisticated schemes sponsored by critics of democratic dogma for apportioning the representation of interests. All such schemes, regarded as instrumentalities for securing justice rather than as mere working devices, result in absurdities when tested by any standard of justice other than the special assumption on which they happen to be founded. Thus it is no doubt true that if representatives are elected at large throughout the entire electorate by simple majority vote, the result is to leave without partisan representation a minority which may be as great as forty-nine per cent of those taking part in the election. On the other hand, if elections are held by districts, exactly the

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same result may follow if the minority happens to be evenly distributed throughout all the districts. In order to avoid such outcomes, proportional representation is proposed. But proportional representation assumes an arbitrary distribution of the various interests in a community into a limited number of organized political parties. For interests not so organized, or not capable of being so organized, it provides no weight. The same criticism is available against the more elaborate recent proposals for representing economic groups—manufacturers, merchants, and various kinds of laborers. Such a distribution of interests is neither exhaustive nor stable.

In estimating the value of these and similar devices, what needs to be remembered is that decision by the "ordeal of number" is, after all, only a makeshift, a matter of convenience at most, and not of essential justice. Because it is an acceptable rough-and-ready standard for many kinds of decisions, it must enter into the processes of democratic government at many points; but what particular kinds of decisions are to be made by counting noses, and whether the noses are to be grouped for counting territorially, industrially, or otherwise, is a question which cannot be determined by considerations of abstract right and justice, but only by examining how far any particular method of counting has actually operated to aid or impede the governmental task of adjusting those interests in the community which, because of their numerical strength, their intensity, or their social value, are insistent enough for government to take account of. This is the answer to such an argument as that representation in the United States Senate is fundamentally unjust because it does not allow equal representation to a voter in New York and a voter in Nevada. Any approach to the problem which attempts to assign numerical weight to interests on the basis of their supposedly just claims assumes that the method of counting is a way of arriving at just decisions instead of being merely a method for ensuring that decisions will be accepted by enough people, and by people well enough distributed, to make them effective. Justice is not

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to be won by arithmetic or mechanics; it must be sought in more subtle ways.

If it is once recognized that the object of reaching decisions by counting is primarily to facilitate their acceptance, it becomes clear that to be effective the numerical process must be coupled with and corrected by other agencies. Of these, the most important is responsible leadership. One of the tests, therefore, of the value of any established system of representation is whether or not it is compatible with the proper functioning of such leadership. Another test is whether or not a representative system provides new interests which are emerging in the community with a chance for making their influence felt. To that end it is desirable that the system should be as flexible and capable of responding to as many currents of changing interests as possible. This result cannot be obtained by any universal formula of apportionment, least of all by a complicated scheme of interest-representation. Every representative system at any given time is bound to be more or less inadequate to what many people expect of it. But stability is no less necessary than flexibility; and stability forbids altering the system from day to day. All that can be asked is that such a system shall on the whole facilitate rather than impede the main objective of democratic government, which is to dispose the several interests in a community to come into forms of political compromise for which they accept a part of the responsibility. The mechanism for reaching such compromises must in the last analysis depend on the nature and demands of the interests themselves at any given time. All that can be insisted on is that it shall be at least as effective as the state of affairs in the community will permit it to be.

VI

To democracy so conceived it is possible to raise a central objection. What provision, it may be asked, do any of the types of government falling within the definition make for committing the decision of political questions to those best

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qualified to decide? With the increase of knowledge in recent years, it is pointed out that many questions arise for political action about which a small number of individuals are alone in possession of the facts necessary for a wise decision. It is said that in the field of private business the executive having to make such a decision would at once summon these "experts" to his aid, and would be guided purely by the data which they presented; whereas under a government of democratic type a political decision is based dominantly on the wishes and opinions of persons who can claim to have no well-informed knowledge, while those who have such knowledge are generally not even consulted.

This criticism is as old as Plato. The form which it commonly takes in current discussion is to insist that in a world where efficiency depends more and more on technical knowledge, governing officials will never be free to follow expert advice until government is relieved of dependence on the unreasonable wishes and ill-informed opinions of the masses on whom it must act. Furthermore, it is added, such a result would be welcomed by the vast majority of citizens themselves in most modern democracies. Political questions have become too complicated and dull to interest them; they realize that they are not competent to decide such questions. They are, however, coming to see that they have a vital interest that government be efficient; and in order to make it so, they would gladly surrender the shadow of power which they possess.

Some points in this argument are well taken. It is true that in almost all activities of government the use of expert knowledge is becoming more desirable; it is also true that in some democracies a large number of voters are ceasing to be interested in some or all of the political decisions they are asked to make. In so far as such a lack of interest prevails among those who are charged with making decisions, and in so far as the use of expert knowledge in government is prevented, there is indicated a serious defect in forms of government which permit such results. The question remains, however,

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whether the remedy proposed is the one adapted to the disease; whether really expert government is to be promoted by eliminating the democratic principle.

At this point we need deeper analysis of the meaning of "expertness" in government than we usually make. The expert in government is not like the expert in surgery or structural engineering, who works from the outside on inert material. Nor are the problems of government like problems of business, where the end in view is always the fixed and simple one of creating larger profits. Good government means only the most effective and least wasteful way of doing the things which at a given time government ought to do. The central problem, therefore, is always what government ought to do, and what it ought to do first. Take for example a municipal government confronted with the problem of whether to increase its police force, its fire department, its water supply, its school system, its recreation facilities. Shall it do all of these things or only some of them? And if some of them, which? These are not technical questions in the ordinary sense. They are questions which turn on the wants felt by human beings, and on what human beings will tolerate in the way of a tax-rate, and in the way of interference with their liberties. Yet these are the factors which a truly expert administrator must take account of. Is it not, therefore, of first importance for him to know whether there is felt in the community any want for schools, for sanitation, for playgrounds, and whether one is wanted by more people, or more intensely by a few people, than the others?

Granting that a given form of democratic government enables the wants felt in a community to get themselves accomplished in something roughly like the order of their relative intensity, it may be that those wants will seem unintelligent to the competent observer. Sanitary conditions may be such as to render pestilence imminent, and yet no important part of the community may show interest in better sanitation; the school system may be wholly inadequate, and yet there may

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be no pressure from within the community for more schools. Under such circumstances it is assumed that government should be in a position to go forward and do what is necessary without waiting for impulses from the community to supply it with momentum—that it should act on the advice of sanitary engineers and educational experts. Doubtless there are extreme cases in the history of almost every community where the community has needed to be saved from itself. But in an advanced community, as distinguished from one just emerging from barbarism or social anarchy, unless such cases are exceptional, strong doubt may be registered as to whether the community is capable of salvation. Dealing only with usual situations, is it in the long run for the best interest of communities to be led by efficient governments along paths in which they should go, or to wait until some element arises in their midst with an effective will that they should go in those paths?

We are here thrown back on one of the oldest dilemmas of politics. It would seem clear that in the long run, no matter how absolute is the power of a government, it cannot make a community develop in directions in which there is no will in the community to develop; sooner or later government sinks to the level of those whom it governs. The picture of a community of unruly children being permanently guided by the disinterested wisdom of its best intellects is an idle dream. Government, whatever its form, is bound to be in the long run far more a reflection of the balance of interests in the community than an agency capable of making the community reflect the independent will and purposes of the governors. This being so, it would seem better in the ordinary case that the influence which the various interests and purposes in the community exert on government should be organized into the orderly processes of democracy than allowed to assert themselves irregularly and sporadically through the methods of absolutism. As an argument against democracy in advanced communities, the need for intelligence in government fails to make out its case.

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But this is not, as votaries of democratic dogma are too prone to suppose, the end of the story. If it is desirable that government be democratic, it is equally desirable that it be intelligent; and every democratic government faces the challenge so to organize itself as to introduce into its processes the largest amount of intelligence which the effective wills at work in the community are willing to tolerate.

To make intelligence effective in government requires primarily that the members of government shall be guaranteed a certain independence, a certain freedom to rise above special interests and make positive contributions of their own toward the adjustment of such interests. When the democratic dogma operates to make such independence impossible, it denies to democratic government its full measure of usefulness. Something can doubtless be done to make up for inefficiency in the political branches of government by developing a trained expert staff in the administrative departments. Departments so manned can exert a certain control over political decisions, and thus supply a partial corrective against gusts of influence from unintelligent sources. But exclusive reliance on expert professional administration has two disadvantages: it creates the real danger of a hide-bound and unprogressive bureaucracy; in addition, professional administrators are incompetent to perform the primary task of political leadership, which is the task of educating the electorate, moulding opinion, and testing and modifying the programs of government in the light of the responses which such educational efforts evoke.

The democratic fear of leadership goes too far when it seeks to convert political leaders into puppets passively responsive to wills they have no share in shaping. Nor is there validity at the opposite extreme in the Carlyle pose of disgust with government by discussion, however futile or mischievous much of such discussion is certain to seem. Without political discussion, orderly government in a mobile community cannot go on, for such government depends primarily on bringing different

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wills and opinions to some measure of mutual understanding. If it is true, as the argument of this paper everywhere presupposes, that government of whatever type must respond to the currents of opinion at work within a society, it is necessary that effort from some source be made to clarify and harmonize the different elements of that opinion.

When government is not organized to take the lead in this task of education, the task will perforce fall into other hands. This is certainly the reason for the enormous spread of propagandist organizations in the United States today. It may be that the activity of these organizations is unfortunate; that they foster antagonisms rather than enlightenment. This is beside the point; the point is that since opinions are bound to influence government, it is inevitable that efforts will be made to influence opinions, and that if one type of agency does not assume responsibility for the work, another will take it up. In this as in other cases, what may at first sight appear as a disturbing excrescence on the democratic system turns out to be only an attempt to supply a deficiency in a particular form of that system and make it workable. The same cause accounts for the addition of an apparatus of direct legislation to the representative system in many of our state governments a few years ago. It had proved almost impossible to set legislatures in motion on behalf of certain kinds of interests, and the initiative and referendum held out a possible way for these interests to make their influence felt. Political structures seldom grow by fundamental reforming, but by developing their own makeshift devices to meet defects as these come to be felt. Sometimes the makeshifts, like the system they are intended to supplement, seem to involve more waste and friction than are ideally necessary. Communities are slow to learn how to escape intelligently and peacefully from a form of government to which they have grown accustomed. It may be clumsy and inefficient, or even corrupt; but until there arises within the community a will serious enough and strong enough to change it, change could hardly be improvement, since it would have no solid base to render it secure.

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VII

It is, of course, not beyond the bounds of possibility that the apparatus of a particular democratic government may in time become so cumbersome and unwieldy, so clogged by superfluous and fictitious influences, and so unresponsive to the living and active interests in a community, that the latter will come to feel it intolerable. In their impatience they may suddenly decide to get as far away from it as possible, and may accordingly consent to an act of revolution, supplanting it with some form of absolutism—with a government which will run on its own steam and not be under the necessity of taking its direction from a composite of petty and unimportant forces. Relief of substantially the same character may come by a less direct and less violent method. Important interests which find governmental agencies too cumbersome to effect the adjustments they desire may build their own apparatus of adjustment outside of, and apart from, the governmental system, through conferences, economic clearing-houses, boards of arbitration, and the like, thus in large measure emancipating themselves from dependence on government. Government will thus come to play what may be thought a less vital rôle in the life of the community. To some extent, this outcome is bound to occur in every community as its processes become more complex, no matter how efficiently its government may be organized. No government can monopolize the function of making human adjustments, and as the need for such adjustments becomes greater, an increasing number of them will inevitably be made through other than political channels. As a result, the relative importance of government may appear to be reduced and it may be plausibly argued that the functions remaining to it can be less wastefully performed by a self-perpetuating professional service than by the elaborate and expensive machinery of democracy.

Granting that a transition, whether by gradual or revolutionary methods, to some form of absolutism, military or bureaucratic, is never wholly beyond the bounds of possibility, however improbable it may seem from indications existing

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at any given time, there remains the question whether it can yield the results anticipated from it. Assume that the most important interests in a community have worked out machinery for making their adjustments without resort to government; assume that government has become organized in a form which is unwieldy and ineffective, and which may even operate to clog and impede satisfactory adjustments arrived at by non-political methods. Under such circumstances, can permanent advantage be expected from substituting a more simple and expert type of government from which the democratic principle is eliminated? An affirmative conclusion must, in the light of what has been said, rest on the belief that the important interests in the community can rely permanently on non-political methods for making their adjustments, and that government can once and for all be relegated to a secondary and relatively unimportant place in community life. Such a belief, it is submitted, can be justified on only one assumption, i.e., that the life of the community will become static, that no decisive changes will take place in the relative importance of interests, that no aggressive new interests will emerge or new contacts be set up between interests not already in contact. If any of these things happen, there will inevitably be need for political action. Voluntary adjustments are ordinarily possible only between a relatively small number of interests, and between interests which have already come to know one another's measure. Where numerous interests are involved, voluntary adjustments between any two or more are almost certain to overlook or override the claims of others. When new interests emerge, old interests are almost certain to refuse them room. For the peaceful solution of such situations, political action is required; and unless there is available for such action a governmental apparatus embodying the democratic principle, sooner or later a needless amount of social friction and disorder will result. The advantages of absolutism are illusory; they amount to a half-way remedy, at times perhaps necessary as the only way of getting rid of an unworkable form of democ-

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racy, but valuable in the long run only as a bridge to some other form of democratic government better adapted to the new needs of the community. Permanent absolutism is compatible only with permanent social stagnation.

The choice before democratic governments is always, therefore, whether they will adapt themselves in season to the more effective performance of their tasks, or whether they will require an interlude of absolutism to bring about the necessary reforms. If a democratic government is allowed to become unwieldy, unmanageable, and corrupt, and to fall under the control of leaders without imagination, initiative, and a sense of responsibility, it may continue in this condition as long as no important tasks are exacted of it. Sooner or later, however, it will be expected to perform such tasks. If it proves unequal to them, a resort to absolutism may follow. But this will afford no ultimately satisfactory relief; unless permanent social inertia ensues, a new form of democracy must sooner or later be worked out.

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THE PERSONNEL OF THE BRITISH FOREIGN OFFICE AND DIPLOMATIC SERVICE, 1851-1929

ROBERT T. NIGHTINGALE

London School of Economics and Political Science

I. CONDITIONS UNDER WHICH FOREIGN AFFAIRS ARE CONDUCTED

The connection between public opinion and public policy is slighter in foreign affairs than in any other sphere of politics. In normal times, international relations have little palpable impact upon the life of the people, and are obscured by more vivid domestic issues until war or some sudden crisis throws a high light on their significance. Even since the Great War, although public realization of the importance of foreign affairs has begun to be aroused in the late belligerent countries—in England at any rate—direct contact between popular opinion and government action is still both sporadic and uncertain.

What is true of the British nation is almost equally true of its representative assembly. Parliament has but little power over foreign affairs. Some of the most momentous changes in the country's relations with other Powers have, in the present century, been accomplished without reference to the House of Commons, and often without even its knowledge. Like the people themselves, the people's representatives exercise only an inconsiderable control over that branch of public affairs which is at present of more vital concern than any other.

Most British foreign secretaries, indeed, regard their actions as matters of exclusively executive concern. A cabinet of twenty ministers, already overworked in their own departments, is not, however, a body which can conduct the country's foreign relations. On his own subject, the Foreign Secretary dominates his ministerial colleagues. Experience shows that he can avoid consultation with all the cabinet save two or three of the principal ministers. In guiding foreign policy, and even

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in controlling decisions which may pledge the nation to future hostilities, the cabinet as a whole has an authority not much greater than that of Parliament.

Accordingly, the Secretary of State for Foreign Affairs is subjected to less criticism from people, Parliament, and cabinet, and enjoys a greater freedom from outside control, than any other minister. It does not follow, however, that he is in the position of an isolated autocrat possessing, as Bryce said, "all but unlimited discretion." Fifty years ago a Foreign Secretary, if he were of the Palmerston type, could stamp his whole policy with the mark of his individuality. Today, however, the ramifications of international affairs are such that no one man, even if he is assisted, as at present, by two parliamentary under-secretaries, can exercise an adequate supervision over the whole field of international relations. Just as Parliament has delegated foreign affairs to the cabinet, and the cabinet to the Foreign Secretary, so the Foreign Secretary is compelled by the pressure of business to delegate an increasing proportion of his authority to his chief permanent officials. Personal administration on any considerable scale is impossible. The Foreign Secretary is responsible for the lines of policy adopted, but in their practical execution he is guided by the Foreign Office and the Diplomatic Service.

The ephemeral political amateur must necessarily be greatly dependent on the established administrative expert. In foreign affairs, the dependence is accentuated, owing, firstly, to the growing congestion of business, and, secondly, to the fact that intercourse between nations is carried on largely by ambassadors and envoys stationed abroad in the various capitals. These diplomatic representatives possess the exact knowledge on which the Secretary of State's decisions must be based, and they are also his chief means of implementing the policies on which he decides. The number of British embassies and legations has increased from twenty-two in 1851 to forty-six in 1929. The Foreign Secretary, oppressed by the accumulation of affairs and the growth of contacts with foreign powers, is

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drawn away from outside influences and relies increasingly on his official advisers at home and abroad.

The dependence of the Foreign Secretary upon his bureaucratic subordinates means that the Foreign Office and the Diplomatic Service are departments of greater autonomy than any other section of the British civil service. An exceptionally great authority is wielded in foreign relations by the bureaucracy in comparison with the democracy. It is even truer in international than in domestic affairs that to discover the incidence and effects of state action it is necessary to look, not merely to the legislature and the executive, but also to the administrative machine by means of which principles are translated into practice. Day-to-day relations with foreign powers are in the hands of accredited representatives enjoying virtual independence. And whereas in domestic administration the future can in a measure be foreseen and provided for, in foreign affairs passing incidents often prove subsequently to be crucial, and crises usually arise without warning. On such occasions, much of the Foreign Secretary's authority perforce devolves upon his representatives on the spot. Moreover, the actual conduct of international relations depends in the main on the interaction of personalities. Individuals count for more than institutions.

Enough has been said to show that the instrument through which foreign policy is conducted, and in practice to a large extent created, is of foremost importance, and that, accordingly, the character of its personnel is worthy of the closest examination.

Speaking in 1858, John Bright described England's foreign policy as "neither more nor less than a gigantic system of outdoor relief for the aristocracy of Great Britain." What truth was there in the generalization at that date? Has it become less true since then? If so, to what extent? To such questions and their implications, a quantitative analysis of the kind that follows can alone provide satisfactory answers.

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II. BELATED APPLICATION OF THE DEMOCRATIC PRINCIPLE

A permanent, competitively-selected administration was one of the greatest political inventions of the nineteenth century. The reform of the British civil service began in 1855. Until then the administrative machine had been manned by placemen who owed their positions to family and political influence. The growth of democratic ideas and the multiplication of the state's liabilities made the system of patronage intolerable. The remedy applied was the competitive examination, which gradually opened the civil service to members of the newly enfranchised middle classes.

The first breach in the aristocratic political régime was made by the Reform Act of 1832. But it was nearly a quarter of a century before any step was taken toward democratization of the civil service. Realization that administrators, like governors, must, if they are to be good servants of the people, be drawn from the people, came slowly and reluctantly.

In the Foreign Office and the Diplomatic Service progress was much slower even than in the rest of the civil service. Until 1880, no limit beyond a "qualifying test" was set to the patronage of the Secretary of State in making appointments to the Diplomatic Service, and even the "limited competition" then instituted was not, to quote the report of the Macdonnell Commission of 1912-14, "calculated materially to raise the efficiency of the service or to widen the area from which candidates were drawn." Until 1919, no candidates could sit for the examination for either the Diplomatic Service or the Foreign Office unless they were "known to the Secretary of State or recommended to him by men of standing and position on whose judgment he could rely, and who themselves knew the candidates personally." Even after nomination, candidates were not permitted to sit for the examination until they were approved by a board of selection, which beyond question was influenced by considerations of social eminence. Moreover, until after the Great War it was made a condition of nomination that

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candidates should possess a private income of not less than £400 a year.

The reason why the democratic principle has been extremely slow in permeating the methods of recruitment for the British Foreign Office and Diplomatic Service is to be found in the theory on which foreign affairs have been conducted. "There is," wrote Bagehot in the sixties, "one kind of business in which our aristocracy have still, and are likely to retain long, a certain advantage. This is the business of diplomacy. . . . The old-world diplomacy of Europe was largely carried on in drawing rooms, and, to a great extent, of necessity still is so." Diplomacy was thought to require a breeding and finesse that could be found only amongst the aristocracy and the gentry. It was a branch of public affairs in which suitable administrators could be secured only if the democracy continued to select them according to the aristocratic principle. To associate on equal terms with the ministers of foreign governments, a diplomat should possess the elegance and refinement of manners which result from gentle birth and aristocratic upbringing. Thus, until 1919, the Foreign Office and Diplomatic Service remained as a relic of a régime which had first begun to crumble in 1832. Almost a century elapsed after the first step had been taken toward democratization of the state before the career of diplomacy was opened unconditionally to ability.

III. FOREIGN OFFICE AND DIPLOMATIC OFFICIALS CLASSIFIED

Some explanation must be given of the nomenclature and classification employed in this study. The term "aristocratic" has been applied to all who hold hereditary titles. The category of "rentier" includes all others who possess independent means which exempt them from the necessity of working for a livelihood. The greater portion of this class belong to the landed gentry and to county families. When, as often happens, a man is a rentier but also follows a profession, he has been classified under his calling. The number of rentiers, therefore, is in fact somewhat greater than the figures disclose.

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"The professions" comprise the church, the law, the army and navy, and medicine. "The higher civil service" indicates the Foreign Office, the Diplomatic Service, the Consular Service, and the rest of the administrative civil service.

The numbers of officials educated at Eton and Harrow are given separately. Other public schools are divided into two sections. The "leading public schools" are for this purpose nine in number, i.e., Westminster, Rugby, Marlborough, Clifton, Winchester, Malvern, Cheltenham, Charterhouse, and Haileybury. Under "lesser public schools" are included all schools appearing in the *Public Schools Yearbook*, a list which comprises, after allowance for the schools already enumerated, some 140 places of education. Where a man has been at more than one university, both are recorded. Education at universities abroad is noted; but many classified under the head "no university" have doubtless studied languages at foreign universities. It is to be observed that the calculations derived from the tables are subject to a certain margin of error, since it has been impossible to obtain complete statistics.

The ranks included in this inquiry are, in the Foreign Office, permanent, deputy, and assistant under-secretaries, chief clerks, counsellors, and assistant secretaries; and in the Diplomatic Service, ambassadors extraordinary and envoys extraordinary. In the period 1851 to 1929, a total of 249 men held one or more of these posts, of whom 39 served in the Foreign Office alone, 192 in the Diplomatic Service alone, and 18 in both services. Table I shows their parentage and the school and university they attended, and gives the same particulars for the Foreign Office and Diplomatic Service separately.

The following table provides a broad picture of the nature of the personnel of the Foreign Office and the Diplomatic Service during the last eighty years. The most striking deduction is that fifty-three per cent belong to the aristocracy or the gentry. Twenty-two per cent were sons of men following one or another of the professions, but only four per cent came from business families. Among parents dependent on their own

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TABLE I

(a) *Parental Occupation*

	F.O.	*D.S.*	*Total*
Aristocrats	17	82	93
Rentiers	6	36	39
Foreign Office	1	3	4
Diplomatic Service	4	10	12
Consular Service	1	5	6
Other C. S. Depts.	4	6	7
Church	2	11	13
Law	3	8	10
Army	5	19	24
Navy	1	3	3
Medicine		4	4
Parliament	4	3	6
Business	2	9	10
Literature		2	2
Academic		1	1
Stage	1		1
Unclassified	6	8	14
	57	210	249

(b) *School*

	F.O.	*D.S.*	*Total*
Eton	27	67	85
Harrow	6	23	27
Leading Public Schools	6	36	38
Lesser Public Schools	4	22	26
Other Schools		9	9
Military and Naval Colleges		5	5
Privately	1	18	18
Abroad	2	9	10
Unclassified	11	21	31
	57	210	249

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(c) *University*

	F.O.	*D.S.*	*Total*
Oxford	15	62	72
Cambridge	9	31	36
London		2	2
Edinburgh		3	3
Glasgow		1	1
Dublin		5	5
Belfast		2	2
Foreign Universities	3	5	7
No University	24	100	115
Unclassified	7	5	12
	58	216	255

efforts for a livelihood, civil servants and soldiers form easily the largest categories. The extent of heredity is worthy of remark. Twelve per cent were sons of members of the Foreign Office or the Diplomatic Service, and if the Consular Service and the rest of the administrative civil service are included, the percentage is seventeen. Investigation shows that the tendency for sons to follow their fathers in a diplomatic career was more marked in the earlier part of the period. Rather surprisingly, among men included in this analysis, only six were the sons of politicians.

Attendance at one or another of the great English public schools is the hallmark of a high social position. Sixty per cent went to the eleven most exclusive schools. Of the remaining forty per cent, well over half attended the lesser public schools, received a military or naval education, or were educated privately or abroad. Only nine men out of 249 have been traced who went to schools other than the recognized public schools and the military and naval colleges, and of these five were not diplomatists *de carrière*. Forty-five per cent of the personnel of the Foreign Office and the Diplomatic Service went to one of the two foremost schools in the country, and over one-third were Etonians.

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The statistics of university education bear out the inferences already clear. Of those who received higher education, ninety per cent went to either Oxford or Cambridge. The remaining ten per cent are accounted for by three who went to Edinburgh and seven who attended Irish universities. Not a single entrant went exclusively to London University. By far the largest category in this column, however, consists of those who attended no university at all. It is significant that only about one man in two of those occupying the selected posts in the Foreign Office and the Diplomatic Service was university trained.

A comparison of the two services shows that the Diplomatic Service is the more socially exclusive. The aristocratic and rentier classes form fifty-six per cent of the Diplomatic Service, but only forty per cent of the Foreign Office. This fact is partly due to the attraction to men of noble birth of servive abroad in an environment of courts and aristocratic society, and equally no doubt to the necessity until recently for ample private means to supplement the diplomat's official salary. A perceptibly higher proportion of the Foreign Office personnel consists of public school men, and indeed no member of the Foreign Office has been traced who has attended any school in the country other than the public schools. Thirteen per cent of diplomats have been educated either privately or abroad. This is attributable to the important part which foreign languages play in diplomacy, and to the exacting linguistic tests imposed on entrants to the Diplomatic Service. It is notable that among men trained at British universities, every member of the Foreign Office without exception went to either Oxford or Cambridge, while six per cent of diplomatists went elsewhere.

Table II shows the proportion of aristocrats at some of the principal British embassies and legations.

A majority of British ambassadors to the republican United States have been of aristocratic birth, and the French Republic has since 1851 received no British ambassador, with the single

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TABLE II

Country	*Total number of diplomatic representatives, 1851-1929*	*Number of Aristocrats*
France	9	8
United States	14	8
Germany	12	10
Belgium	10	8
Austria	16	12
Italy	13	6
Russia	15	11
Portugal	18	10
Greece	12	8
Netherlands	14	10
Sweden and Norway	20	10
	153	101

exception of the present one, who has not been a member of the aristocracy. Furthermore, the proportion of aristocrats is distinctly higher in the more important than in the less important diplomatic posts. Over the whole period, 35 out of the 66 ambassadors have been aristocratic in origin, but in the case of envoys the proportion is only 73 out of 194. These figures lend color to the theory that preference is shown to aristocrats in appointments to the highest-placed chancelleries.

The broad conclusion indicated by the statistics hitherto tabulated is that the British Foreign Office and Diplomatic Service are wholly unrepresentative of the general community whose accredited delegates they are. Their members are drawn to the extent of thirty-seven per cent from the aristocracy, which consists of no more than about one thousand families, and to the extent of eighty-six per cent from the aristocratic, rentier, bureaucratic, and professional classes—classes which form a mere fraction of the total population.

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IV. TENDENCIES RESULTING FROM CHANGES OF RECRUITMENT PROCEDURE

It is important to discover whether during the seventy-nine years under review any change in the character of Foreign Office and diplomatic personnel has taken place, and whether the reforms in the procedure of recruitment which have from time to time been effected have enlarged the circle from which entrants are drawn.

Attention must be given mainly to the pre-war period, because although far-reaching reforms in the examination system were carried out after the war, their effect during the last decade is as yet difficult to estimate. The system that the reforms of 1919 supplanted was recruitment by what has been called "limited competition." In the Foreign Office, "limited competition" replaced patronage as early as 1857, but in the case of the Diplomatic Service there were two landmarks in the reform movement. In 1857 pure patronage was supplemented by a "qualifying test." No competitive element was, however, introduced into the test, and it was not until 1880 that "limited competition" was set up. Table III gives particulars for 51 men who went into the Diplomatic Service during period 1 (up to 1856), the period of undiluted patronage; 30 during period 2 (1857 to 1879), the period of the "qualifying test;" and 87 during period 3 (1880 and after), the period of "limited competition."

The table mentioned is evidence of a well-defined movement toward democratization in the Diplomatic Service. During the epoch of patronage, two out of every three diplomatists were aristocrats. After the reform of 1857, the proportion declined to one in two, and when competition was inserted in the examination in 1880, to less than one in three. The percentage of men whose fathers earned their own livelihood rose from twenty in the first period to thirty-seven in the second, and forty-four in the third. The proportion of sons of civil servants increases perceptibly after 1880, and the parental categories of professional and business men show a marked ex-

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TABLE III

(a) *Parental Occupation*

	Period I	*Period II*	*Period III*
Aristocrats	32	15	25
Rentiers	5	4	23
Higher Civil Service	5	3	12
Professions	3	7	19
Parliament	1		2
Business		1	4
Literature	1		
Academic			1
Unclassified	4		1
	51	30	87

(b) *School*

	Period I	*Period II*	*Period III*
Eton	15	7	38
Harrow	3	8	10
Leading Public Schools	7	5	18
Lesser Public Schools	2	5	5
Other Schools	2		2
Military Colleges	2	1	
Privately	6	2	7
Abroad	3		3
Unclassified	11	2	4
	51	30	87

(c) *University*

	Period I	*Period II*	*Period III*
Oxford	8	13	34
Cambridge	8	1	15
Edinburgh	2		
Dublin	3	2	
Foreign Universities	2	1	2
No University	27	13	36
Unclassified	2		2
	52	30	89

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pansion over the whole period. The percentage educated at the eleven most exclusive public schools rises from forty-nine in the first to sixty-seven in the second and seventy-six in the third period. The higher proportion of public school men in recent years may be attributed to the fact that Roman Catholics, who have always been numerous in both the Foreign Office and the Diplomatic Service, were formerly debarred from going to English public schools, and were educated, as the investigation bears out, either at Catholic schools, in England or abroad, or privately at home. Since the abolition of patronage there has been a discernible increase in the proportion of academically trained men. Moreover, it is noteworthy that not a single diplomatist of distinction who has entered the service since 1880 has been trained at any university other than the two premier ones.

In the case of the Diplomatic Service, and to a less degree the Foreign Office, there has been a constant influx of men who have not entered the services at the usual age or passed through the lower ranks. Table IV gives particulars, including their previous careers, for these outsiders, who number 47 in all, and form twenty per cent of the personnel of the Diplomatic Service and eleven per cent of that of the Foreign Office.

It is clear from this same table that this category is drawn

TABLE IV

(a) *Parental Occupation*		(b) *School*	
Aristocrats	10	Eton	9
Rentiers	6	Harrow	3
Higher Civil Service	5	Leading Public Schools	6
Professions	17	Lesser Public Schools	12
Business	5	Other Schools	5
Literature	1	Military and Naval Colleges	2
Unclassified	3	Privately	3
	—	Abroad	3
	47	Unclassified	4
			—
			47

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(c) *University*		(d) *Previous Career*	
Oxford	11	Consular Service	25
Cambridge	8	Higher Civil Service	5
London	2	Politics	9
Edinburgh	1	Army	1
Glasgow	1	Navy	1
Belfast	2	Royal Household	2
No University	24	Law	2
Unclassified	1	Journalism	2
	50		47

from a lower social stratum than the remainder. The percentage whose fathers belonged to the leisure class is thirty-four, in comparison with fifty-seven for the rest of the personnel. The professions are here the largest category of parental occupations. Sixty-five per cent of those who spent their lives in the Foreign Office or in diplomacy were at the more exclusive public schools, as contrasted with thirty-eight per cent among the laymen, and in the foregoing table public schools of the second rank form the largest scholastic class. Of the seven members of the Foreign Office and the Diplomatic Service who alone have exclusively attended any British university other than Oxford or Cambridge, it is notable that three have been men who entered the services after careers elsewhere. It is worthy of note also that the proportion of outsiders who have had an academic training is slightly below the general average for the Foreign Office and the Diplomatic Service.

A study of the previous careers of men under this head reveals the fact that a majority of them had served in the Consular Service. Several of the twenty-five thus accounted for had been student interpreters, while others had passed through the army and had become military attachés before being drafted into the Consular Service. In respect to some countries where a thorough knowledge of national traditions and customs is desirable, it has been a common practice to fill diplomatic vacancies from the junior service. Four out of ten

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diplomatic representatives in Japan, seven out of thirteen in China, three out of eight in Morocco, two out of four in Ethiopia, and all three in Costa Rica were appointed to their embassies or legations without previous experience in the Diplomatic Service, and all of them had graduated through the Consular Service. Of the forty-seven men drafted into the Foreign Office or the Diplomatic Service from outside, all except four came from some career of state service or public life. It is noteworthy that nineteen per cent of them were drawn from politics, and in recent years a growing disposition is observable to award the highest posts to distinguished politicians. Of the five most recent ambassadors at Washington two—Viscount Bryce and Sir Auckland Geddes—had been ministers of the crown.

Ambassadors and envoys promoted from below, or from outside, have frequently had diplomatic careers of unusual distinction. Sir Ernest Satow at Peking and Tokio, and Sir John Jordan at Tokio, both of whom were taken over from the Consular Service, were diplomatists of special prominence, the latter being the greatest authority on China in his day. Sir William White at Constantinople was one of the most celebrated of ambassadors. Two ex-politicians—Viscount Bryce in the United States and the Marquess of Dufferin in France—were outstanding diplomatic successes.

The Macdonnell Commission on the Civil Service (1912-14) made certain recommendations for the reform of the Foreign Office and the Diplomatic Service which were put into effect in 1919. The two services were amalgamated into a single "Foreign Service." While special proficiency was still to be required in foreign languages, the general examination scheme was assimilated to that for the rest of the administrative civil service. The requirement that a candidate, before proceeding to the examination, should obtain a nomination from the Secretary of State himself, or from someone "of standing and position," and also that he should have a private income of £400 a year, was abolished. Effect was given to the proposal that

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"the salaries and allowances in the Diplomatic Service should .... make it possible for a member of that service to live upon his official emoluments."

It is a matter of great importance to discover whether the adoption of these reforms has had any marked influence on the nature of the personnel recruited since 1919. Statistics are sparse, but the reports of the Civil Service Commissioners from 1923 to 1928 give the places of education of the thirty-one successful candidates during that period. These figures are as follows:

TABLE V

(a) *School*		(b) *University*	
Eton	7	Oxford	19
Harrow	3	Cambridge	11
Leading Public Schools	10	London	1
Lesser Public Schools	9	No University	1
Other Schools	2		
	31		32

The Macdonnell Commission carried out a similar analysis for the same number of years just before the war, and it is instructive to observe its findings. "We have been furnished by the Civil Service Commissioners," states the report, "with the educational antecedents of the successful competitors for attachéships in the years 1908 to 1913 inclusive. No fewer than twenty-five out of thirty-seven (about sixty-seven per cent), came from Eton, while all but a very small fraction had been educated at one or other of the more expensive public schools. In only one case was any university other than Oxford or Cambridge represented." The conclusion is that "no further evidence is required to show the limiting effect of the present regulations upon the class of candidates from which the Diplomatic Corps is recruited."

Some change in the character of the personnel admitted appears to have resulted from the adoption of the new regulations. The percentage coming from Eton has fallen from sixty-

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seven to twenty-three. But the change is not profound. Sixty-five per cent in the later period attended one or another of the eleven leading public schools—a percentage which is actually five points higher than the corresponding percentage for the whole period since 1851. Moreover, every entrant, with the exception of one from a preparatory school and another educated at the Royal Naval College, Dartmouth, received a public school education. Furthermore, as in the six pre-war years, there is only one instance of any university other than Oxford or Cambridge being represented, and this entrant in the later period was also an Oxonian. It is also worth noting that while during the whole period studied only about one man in two was university-educated, in the selected post-war years one man alone out of thirty-one did not receive an academic training.

The general inference which follows from a study of the effects of the various reforms in the examination regulations is that they have been substantial but not profound. There has been a gradual modification of the personnel, but no radical transformation. During the period of patronage, nearly three out of four diplomatists were members of the aristocracy or the gentry. Since then, democratization of the conditions of entry has enabled civil servants and professional men increasingly to send their sons into the Foreign Service. The series of reforms has not yet sufficed, however, to make the Foreign Office and the Diplomatic Service representative of all classes of the community. No trace is discoverable, even since the Macdonnell Commission swept away social distinctions and made diplomacy a career open to talent, of men entering the Foreign Service who have climbed the educational ladder from state elementary school to university. This branch of the British civil service is still dominated by the greater public schools and by the older universities. Despite the reforms, environmental advantages still weight the balance heavily in favor of the propertied and the professional classes.

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V. TRAINING FOR THE FOREIGN SERVICE

The theory which, first enunciated by Macaulay, has since 1855 governed entrance to the British civil service is that the scheme of examinations should be bound up with the general educational system of the country. In the case of the Foreign Office and the Diplomatic Service, however, the prominence given to foreign languages in the examination has imperilled the full application of the "Macaulay principle." Great advantage in the linguistic section of the examination accrues to candidates who have proceeded straight from school to a foreign university or tutor. Of the personnel investigated since 1851, almost one-half sat for the examination after having spent their post-school years elsewhere than at a British university.

Failure to profit by the widening of intellectual vision conferred by university life must be a severe handicap to the diplomatist. Once his career opens, he is an exile. Three years at a British university should enable him to appreciate the currents of domestic thought and to evaluate the social forces of his day. If this period of preparation for a diplomatic career is spent abroad, the would-be diplomatist is inevitably cut off from knowledge of the social and political movements of the country which he expects to represent to foreigners.

The necessity for dealing with this problem was recognized by the Macdonnell Commission. "If our proposals are adopted," the commissioners stated, "the diplomatic service will be made more attractive to men of ability and high academic training, while its members will have greater opportunity of studying subjects of value to them in their profession. Charges have been made before us of defects of knowledge and narrowness of outlook in members of the diplomatic service, and without admitting the justice of such general criticisms, we consider that in many cases there is room for improvement." It appears from the admittedly incomplete evidence obtainable (see Table V) that the remedies which the Com-

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mission prescribed have had the desired effect. In the years 1923 to 1928, only one non-university-trained candidate was admitted into the Foreign Service.

The observations of the Macdonnell Report imply a further criticism of the customary education of candidates for the Foreign Service. Not only is it important that the diplomatist should have acquired a familiarity with what is best in the thought of his own country, but his intellectual equipment should also include a knowledge of economic and political science. It may be true that men who have stayed at a university to the age of twenty-one or twenty-two are well equipped for any profession, but this liberal education requires for such a career as diplomacy a supplement of specialized information. Men destined for the fighting services are trained in the art of war-making. Diplomatists should have mastered whatever theoretical knowledge may assist them in the art of peace-making.

An inconsiderable fraction of entrants to the Foreign Service take economic and political subjects in the examination, and indeed an idea is current that some special favor is accorded by the examiners to those who offer the classics. The fact that so substantial a proportion as twenty per cent of the more distinguished diplomatists have since 1851 been drawn from the ranks of the Consular Service and of other branches of the civil service and from among eminent politicians, together with the additional fact that these laymen have often had careers of outstanding merit, justifies some criticism of the talent available among professional diplomatists. In particular, numerous promotions from a junior service devoted to commercial activities lend color to the contention that a knowledge of the economic world which forms the background of modern political activity should be an integral part of any training for diplomacy. The conduct of foreign relations cannot be provided for properly unless it is recognized that they must be a subject of special study on the part of those responsible for them.

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VI. CONDITIONS OF A GENUINELY DEMOCRATIC FOREIGN SERVICE

The unchallengeable conclusion that emerges from this statistical analysis is that the British Foreign Office and Diplomatic Service have been a preserve for the sons of the aristocratic, rentier, and professional classes. For this reason, their personnel is not a fair sample of British society as a whole. This was the view of the Macdonnell Commission: ". . . . the Diplomatic Service is effectually closed to all His Majesty's subjects, be they never so well qualified for it, who are not possessed of private means. The official conditions of entry into this service fix the amount of the private means required at a minimum of £400 a year. The effect is to limit candidature to a narrow circle of society." The bureaucracy in foreign affairs has been one of the last strongholds in which the aristocratic principle has withstood the advance of democracy.

Men who have been nurtured in the British upper class have lived in a world secluded from the common people. Education at a great public school and one of the older universities provides a liberal education that fits men to be good administrators, but it is also a process of initiation into a social caste. Those so reared and trained are imbued with the peculiar prejudices of their walk of life. They are too far removed from the common people to comprehend their point of view. Their perspective is not characteristic of the nation as a whole.

In a democracy the Foreign Service ought, firstly, to represent to peoples abroad the mental attitude of the nation it stands for, and, secondly, to convey to the government at home the mind of foreigners. It is not qualified to perform either of these functions if it is representative only of a very small section of the life of the nation. With the best intentions, it can accurately interpret neither the lines of policy laid down by statesmen nor the general inclinations of public opinion. Unless the diplomatic personnel is typical of all classes, it will not work with a constant sense that it is the servant of the whole body politic.

In former times, the practice of diplomacy was restricted

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to courts and the highest social circles, and this was the reason which Bagehot gave as justifying the predominance of the aristocracy in British diplomacy. But today aristocratic society is in most countries divorced from government. Familiarity with aristocratic habits is no longer a necessary qualification for the diplomatist. Indeed, the problems that have faced the world since 1919 demand treatment by men with qualities entirely different from those associated with the aristocratic frame of mind. The successful diplomatist needs in this age the capacity to mix with men of all classes and viewpoints, a capacity which is not to be acquired from an upbringing in British upper-class society.

Since the Great War there have been in all countries a keener public interest in foreign affairs and a greater popular aspiration toward the maintenance of peace than ever before. In England, these feelings have to a considerable extent found expression in the form of dissatisfaction with the traditional conduct of international relations. One general remedy which has attracted widespread support is the closer association of foreign politics with public opinion. The objects of diplomacy, it is argued, should be attuned to those of the people at large. Projects such as the establishment in the House of Commons of a permanent foreign affairs committee are now advocated as a means to this end. Another way of bringing diplomacy into closer touch with democracy would be to make its personnel a microcosm of the nation as a whole. A foreign service containing representatives of all social classes should produce a type of official more responsive to public opinion.

Bright's dictum has lost some of its force since it was enunciated; but the propertied, if not the purely aristocratic, class is still predominant in the British bureaucracy of foreign affairs. The necessity for widening the field of selection was recognized by the Macdonnell Commission, and since 1919 the Foreign Service has been recruited by merit regardless of class qualifications. Reform of the method of recruitment, however, represents only the first step. As the available evidence indi-

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cates, it alone will not produce a genuinely democratic diplomacy. What has next to be done is less obvious, equally necessary, but more difficult. It is so to reconstruct the nation's scholastic system that citizens of all classes will be enabled to reach the top rungs of the educational ladder.

Complete emancipation from considerations of social status must, of course, be a slow process. Even when the sons of the lower middle and working classes gain admission to diplomacy, there is likely to be a bias against their preferment so long as the permanent under-secretaries and the ambassadors of the old régime remain in control. In the meantime, a foreign service manned by persons drawn from the privileged classes will remain antipathetic to the new internationalist ideals. A democratic diplomacy is alone capable of exploiting the moral forces rallied today behind the cause of world peace.

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NATURAL LAW, DUE PROCESS, AND ECONOMIC PRESSURE

MARGARET SPAHR

Hunter College of the City of New York

"Liberty of contract" is an honorable phrase. It is not too much to say that contractual freedom is generally regarded as the crowning glory of Anglo-American law in general and of the American constitutional system in particular. Belief in a pre-civil state of nature may have been cast into the discard, but not so the belief in natural law in the sense of ideal law, in natural rights as rights superior—if not anterior—to civil rights, and in freedom of contract as one of the greatest of the natural rights secured by natural law. There is well-nigh universal approbation of the philosophy implicit in Sir Henry Maine's famous conclusion that "the movement of the progressive societies has hitherto been a movement from Status to Contract,"[1] and there is general satisfaction that certain American constitutional provisions preclude any retrograde movement in the future. In particular, there is rejoicing that the due process clauses of the Fifth and Fourteenth Amendments insure to the American workman his natural freedom of contract against any insidious attempt to relegate him to a servile status. In spite of an occasional voice crying in the wilderness,[2] it is still heretical to suggest that constitutional contractual liberty amounts to a guarantee that economic pressure may be exerted by the rich upon the poor, by the employer upon the employee. The hypothesis deserves further exami-

[1] Sir Henry S. Maine, *Ancient Law*, c.v., last par., p. 165 in the tenth edition.

[2] An outstanding discussion of contractual liberty is that of Dean Roscoe Pound in his article entitled "Liberty of Contract," 18 *Yale Law Journal* 454 (1909). Dean Pound's exhaustive presentation anticipates much of the present article, but his examination of Supreme Court decisions is necessarily restricted to those rendered before 1909.

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nation. It will be profitable to ascertain how far the use of economic pressure has been deemed natural in English law and philosophy, and then to observe the extent to which it is recognized in American constitutional law as a natural right superior to any legislative enactment.

But first it will be well to dispel the ambiguity that enshrouds the term "status," so commonly set up as a dread antithesis to "contract." Sir Henry Maine himself took pains, in the above-quoted passage about the movement of progressive societies, to "avoid applying the term [status] to such conditions as are the immediate or remote result of agreement;" that is, he applied it only to conditions resulting from the operation of law upon the fact of birth, without any intervening assent or acquiescence on the part of the individual affected. It is clear that status in this sense (with a few exceptions such as the status of the minor child in family law) is highly objectionable to American sentiment. But it ought to be equally clear that no compulsory arbitration or minimum wage law has the slightest tendency to create this type of status. What such legislation does is to prescribe that *if* certain employment agreements are made, they shall be made on certain terms, just as both common and statute law prescribe certain terms upon which a man and a woman shall marry, *if at all,* or as statute law prescribes the terms under which one shall adopt a child, *if one so wishes.* Assent is necessary in all these cases; but the terms accepted are not set by the haggling of the parties, and hence it is said, contrary to Maine's restrictive definition, that the parties enter into a "status," the incidents of which are determined by the law of the land. Thus the preference for contract rather than status is a preference for contractual terms set by individual bargaining rather than contractual relations on terms prescribed by the lawmakers as suitable ones.

The haggling method of settling terms has undoubtedly been preferred by the English judiciary, although Parliament has often been of another mind, as when by the Statute of Laborers

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in 1351 it prescribed that wages should be restricted to the level prevailing prior to the Black Death. Except in the field of domestic relations, there is very little of status in English judge-made law, but it must not be supposed that the courts have recognized freedom of contract to the extent of enforcing all agreements entered into, no matter how a stronger party may have dictated terms to a weaker. On the contrary, the latter is in many cases released from obligations that he has expressly assumed. A purported contract is vitiated by the incompetence—infancy, insanity, or intoxication—of one of the parties; by fraud, broadly construed to include so-called constructive fraud in certain cases where, although neither party is technically incompetent, one is greatly the superior of the other in intelligence or knowledge; and by duress and undue influence—including in modern equity cases almost every sort of interference with person or property or the threat thereof. Although attention is focussed upon the inception rather than upon the terms of the intended contract, a court rarely interferes unless the terms appear unjust; so that the law is actually, although indirectly and negatively, working toward an objective standard of contractual terms in many cases where the contracting parties meet on an inequality.

There is, however, a noteworthy exception to this tenderness of the courts. Where a party has assented to a disadvantageous contract under the urge of economic necessity, he may not on that account escape from his obligation. However much economic pressure (other than interference with property) may have been exerted by the other party, a court finds that the agreement has been voluntarily made and is enforceable—unless it is impaired by some additional element as incompetence or fraud. Occasionally, as in the years immediately following the Black Death, it is the workman who is in the favorable bargaining position, but it is obvious that economic necessity is normally an ally of the propertied class. Thus a striking feature of Anglo-American law is the ability of the propertied to secure unduly advantageous contractual terms, that

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is, terms more favorable than would be allowed if "fair" terms were prescribed by law. Advantage from superior brains is sharply restricted by the doctrines of incompetence and fraud; advantage from superior physical strength is wholly eliminated by the doctrine of duress; but advantage from superior wealth is unrestricted by any doctrine of either law or equity. Freedom to exert economic pressure may be said to exist under that natural law declared in Anglo-American judicial decision.

But common law rights, however natural to the English judiciary, are not synonymous with the rights guaranteed by the American Constitution. Countless rules that were natural law to English judges are subject to legislative modification in the United States, in spite of the constitutional guarantees that no person shall be deprived of life, liberty, or property without due process of law. We must look beyond both the constitutional provisions and the common law if we are to understand why the common law right of liberty of contract is peculiarly immune from statutory interference. The question is in its essence a philosophical one, and suggests a resort to philosophical literature. It can hardly fail to be fruitful to examine the doctrines of such influential English political philosophers as John Locke (1632-1704), Jeremy Bentham (1748-1832), John Stuart Mill (1808-1873), and Herbert Spencer (1820-1903).

John Locke, the great defender of the "Glorious Revolution" of 1688-89, was sure of an attentive hearing in England's American colonies. His treatise on *The True End of Civil Government*[3] became a classic of the period of the American Revolution, when his views as to the relation between taxation and representation[4] were peculiarly acceptable. But Locke's theory of taxation is only a particular application of his even more significant general philosophy of the natural rights of life, liberty, and property. He reasons: "The state of nature has a law of nature to govern it, which . . . . teaches all mankind . . . . that . . . . no one ought to harm another in his

[3] First published in 1690.

[4] *The True End of Civil Government*, s. 140.

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life, health, liberty, or possessions.'"[5] Again: "Man .... hath by nature a power .... to preserve his property—that is, his life, liberty, and estate.'"[6] And yet again: "But though men when they enter into society give up the equality, liberty, and executive power they had in the state of nature into the hands of the society, ... yet it being only with an intention in every one the better to preserve himself, his liberty and property (for no rational creature can be supposed to change his condition with an intention to be worse), the power of the society or legislative constituted by them can never be supposed to extend further than the common good.'"[7]

Here is clearly seen the germ of the "unalienable rights" of "life, liberty, and the pursuit of happiness" whose self-evidence was manifest to the author of the Declaration of Independence,[8] and of the rights of "life, liberty, [and] property" that are assured "due process" by the bills of rights of many state constitutions and by the Fifth and Fourteenth Amendments to the Federal Constitution.

But it should be observed that Locke nowhere either expressly or impliedly recognizes a natural right of contract. His natural right of property is primarily restricted to the *use*[9] of property secured by *labor*. "The same law of nature that does by this means give us property, does also bound that property too. .... As much as any one can make use of to any advantage of life before it spoils, so much he may by his labor fix a property in. .... As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property.'"[10]

[5] *Ibid.*, s. 6.

[6] *Ibid.*, s. 87.

[7] *Ibid.*, s. 131.

[8] "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." *Declaration of Independence*, par. 2.

[9] Locke was probably influenced by the very similar doctrine of Aristotle expressed in *The Politics*, bk. I, chaps. 9-10.

[10] *The True End of Civil Government*, ss. 30, 31.

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The right to property secured by barter is approved, and perhaps recognized as natural;[11] but the use of money is introduced only by assent,[12] and the rightfulness of the resulting disproportionate distribution of property is hence dependent upon convention[13] and not upon natural right. If these are Locke's views as to executed contracts of sale, he must certainly *a fortiori* reject the doctrine that there is a natural right to use economic pressure to secure favorable terms in an executory contract. It is not surprising that liberty of contract was not derived from constitutional due process provisions until Locke's philosophy had been supplemented by that of the utilitarian school.

There is a delicious incongruity in turning to Jeremy Bentham[14] as the author of the natural right of freedom of contract, for Bentham is an absolute unbeliever on the subject of natural law[15] and opposes the doctrine of natural rights so vehemently as to exclaim: "Natural rights is simple nonsense, —natural and imprescriptible rights, rhetorical nonsense,— nonsense upon stilts."[16] But Bentham does not hesitate to frame a system of ideal law—ideal because in accordance with the principle of utility or the greatest happiness of the greatest

[11] *Ibid.*, s. 46.

[12] "And thus came in the use of money; some lasting thing that men might keep without spoiling, and that, by mutual consent, men would take in exchange for the truly useful but perishable supports of life." *Ibid.*, s. 47.

[13] "But since gold and silver, being little useful to the life of man, in proportion to food, raiment, and carriage, has its value only from the consent of men . . . . it is plain that the consent of men have agreed to a disproportionate and unequal possession of the earth . . . . they having, by consent, found out and agreed in a way how a man may, rightfully and without injury, possess more than he himself can make use of by receiving gold and silver." *Ibid.*, s. 50.

[14] Bentham is mentioned by name in the course of Mr. Justice Holmes' opinion in Otis and Gassman v. Parker, 187 U.S. 606, 609 (1903).

[15] "A great multitude of people are continually talking of the Law of Nature; and then they go on giving you their sentiments about what is right and what is wrong: and these sentiments, you are to understand, are so many chapters and sections of the Law of Nature." *Principles of Morals and Legislation*, c. II, s. XIV, n. 6. In *Works*, I, p. 9.

[16] *Anarchical Fallacies: being an Examination of the Declaration of Rights Issued During the French Revolution.* Article II. In *Works*, II, pp. 500-501.

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number—and freedom of contract figures heavily in this ideal system. To be sure, Bentham is far from agreeing with the absolutist philosopher, Thomas Hobbes (1588-1679), to whom "injustice is no other than the not performance of covenant,"[17] and even "covenants entered into by fear . . . . are obligatory."[18] To Bentham a contract is valid only where its observance makes for utility,[19] but he finds utility lacking only in a few cases which correspond very closely to those in which a purported contract is invalid under English common law or equity.[20] He does not in so many words approve of securing contractual advantage by the use of economic pressure, but approbation of this procedure is thoroughly in harmony with his general views. Impressed by the tremendous function of capital in modern economic life, he believes that the principal object of law is the security that induces capital investment,[21] that without security "the only equality that can exist . . . . is the equality of misery,"[22] and that "the laws, in creating property, have been benefactors to those who remain in their original poverty," since these latter "participate more or less in the pleasures, advantages, and resources of civilized society: their

[17] *Leviathan*, c. xv, par. 2, p. 74 in Everyman edition.

[18] *Ibid.*, c. xiv, eighth par. from end, p. 72 in Everyman edition.

[19] "To acknowledge that any *one* promise may be void, is to acknowledge that if any *other* is *binding*, it is not merely because it is a promise. That circumstance, then, whatever it be, on which the validity of a promise depends; that circumstance, I say, and not the promise itself, must, it is plain, be the cause of the obligation which a promise is apt in general to carry with it. . . . . Now this *other* principle that still recurs upon us, what other can it be than the *principle of UTILITY?*" *A Fragment on Government*, ss. xlvi, xlviii. In *Works*, I, p. 271.

[20] The cases in which the law ought not to sanction exchanges and in which consent in the disposal of services is annulled are listed under the following heads: 1. Undue concealment. 2. Fraud. 3. Undue coercion. 4. Subornation. 5. Erroneous supposition of legal obligation. 6. Erroneous supposition of value. 7. Interdiction-infancy-madness. 8. Things liable to become hurtful by the exchange. 9. Want of right on the part of the collator. *Principles of the Civil Code*, pt. II, c. II, s. 2; and pt. II, c. v, s. 3. In *Works*, I, pp. 331 and 341.

[21] *Ibid.*, pt. I, c. VII, par. 1; pt. I, c. X, s. 4; and pt. I, c. XI, par. 4. In *Works*, I, pp. 307, 310, and 311-312.

[22] *Ibid.*, pt. I, c. VII, par. 1. In *Works*, I, p. 307.

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industry and labor place them among the candidates for fortune: they enjoy the pleasures of acquisition; hope mingles with their labors."[23] Although Bentham infinitely prefers legislation to judicial decision, and speaks in terms of utility and not of right, he has much in common with the Supreme Court justices who protect the freedom of contract from legislative interference.

Less systematic, but of fully equal significance, is the discussion of contractual liberty contributed by Bentham's disciple, John Stuart Mill. Mill disapproves of usury laws, since "a person of sane mind, and of the age at which persons are legally competent to conduct their own concerns, must be presumed to be a sufficient guardian of his pecuniary interests,"[24] and denounces the classing of women with children in the British factory acts as "indefensible in principle and mischievous in practice."[25] He recognizes that "there are matters in which the interference of law is required, not to overrule the judgment of individuals respecting their own interest but to give effect to that judgment."[26] But the interference which he advocates is merely the according of legal validity to combination agreements,[27] "the persons combining being supposed to be of full age, and not forced or deceived."[28] It is upon coöperation between workers and upon the voluntary concessions of employers, especially by way of profit-sharing, that he depends for an improved condition of the laboring classes in the future.[29] In the case of Irish cotters, Mill admits that economic necessity has led to the acceptance of oppressively high rent levels, and sees no way of escape through concerted action. But even here he is fearful of legislation prescribing

[23] *Ibid.*, pt. I, c. IX, par. 2. In *Works*, I, p. 309.

[24] *Principles of Political Economy*, bk. V, c. X, s. 2, p. 928 in the edition edited by W. J. Ashley.

[25] *Ibid.*, bk. V, c. XI, s. 9, p. 955 in Ashley's edition.

[26] *Ibid.*, bk. V, c. XI, s. 12, p. 963 in Ashley's edition.

[27] *Ibid.*

[28] *On Liberty*, c. I, p. 75 in Everyman edition. *Cf. Political Economy*, bk. V, c. X, s. 5, p. 939 in Ashley's edition.

[29] *Principles of Political Economy*, bk. IV, c. VII.

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terms of tenancy.[30] Although he is aware that economic inequality may be somewhat inconsistent with the contractual liberty of the weaker party, he does not regard even extreme poverty as an incapacity analogous to infancy, but advocates freedom of contract subject only to the time-honored restrictions. Not only does he agree with Bentham that contractual liberty of the orthodox type makes for economic progress,[31] but he pleads for liberty, including liberty of contract, in the interest of the individual citizen's dignity and personality.

His ideal is best expressed in his classic *On Liberty*,[32] in which a typical passage reads: "The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. . . . . The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because, in the opinions of others, to do so would be wise, or even right. . . . . The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."[33] This philosophy gives freedom of contract an idealistic turn that makes the doctrine peculiarly persuasive in American ears.

Furthermore, it is to be noted that Mill frequently, as in the above-quoted passage, uses the terms "right" and "rightfully." He expressly disclaims "the idea of abstract right, as a thing independent of utility,"[34] and laughs gently at the notion

[30] *Ibid.*, bk. II, cc. IX and X.

[31] See, for example, *On Liberty*, c. V, pp. 150-151 in Everyman edition.

[32] This essay is cited by counsel in the argument of Mugler v. Kansas, 125 U.S. 623 (1887). *On Liberty* was first published in 1859, whereas *Principles of Political Economy* was first published in 1848.

[33] *On Liberty*, c. I, pp. 72-73 in Everyman edition.

[34] *Ibid.*, c. I, p. 74 in Everyman edition.

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of natural law,[35] but his reader is nevertheless likely to understand Mill's "right" in Locke's sense of the term. This result is the more probable in view of the fact that the utilitarian ideal of freedom is in full accord with the law of freedom of contract as declared in English judicial decisions. It takes very little mysticism to see in this coincidence a sign that freedom of contract exists by virtue of some inherent higher law, and this, in turn, has a constitutional significance in the United States. If the liberty guaranteed in the Fifth and Fourteenth Amendments means anything, surely it must include such a natural liberty as freedom of contract.

This conclusion derives additional weight from the philosophy of Herbert Spencer. Spencer agrees with Bentham and Mill on many points, but differs from them in recognizing a moral sanction higher than any consideration of utility. Whether he bases his argument on an intuitive moral sense, as in his early *Social Statics,*[36] or on a purely evolutionary origin of ethics, as in his later *Justice,*[37] he preaches the fundamental ethical principle that "Every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man."[38] From the law of equal freedom, existing as a right independent of the state,[39] is derived the right of free exchange,[40] and from this in turn is deduced the right of free

[35] "The rules which obtain among themselves appear to them self-evident and self-justifying. This all but universal illusion is one of the examples of the magical influence of custom, which is not only, as the proverb says, a second nature, but is continually mistaken for the first." *Ibid.,* c. I, p. 69 in Everyman edition.

[36] First published in 1850.

[37] First published in 1891.

[38] *Social Statics,* c. VI, s. 1. This formula is found with only a slight verbal change in *Justice,* c. VI, s. 27.

[39] "Rights, truly so called, originate from the laws of life as carried on in the associated state. The social arrangements cannot create them, but can simply conform to them or not conform to them." *Justice,* c. XXII, s. 98. *Cf. Social Statics,* c. XVIII, s. 1.

[40] "Furthermore, the right of exchange may be asserted as a direct deduction from the law of equal freedom. For of the two who voluntarily make an exchange, neither assumes greater liberty of action than the other, and fellow men are un-

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contract.[41] To Spencer there is no intermediate position between the system of contract (presumably under the limitations imposed by English common law and equity) and a system of status in which each individual "has his appointed place, works under coercive rule, and has his appointed share of food, clothing, and shelter."[42] Any legislative regulation of contract is a retrogression "from freedom to bondage."[43] Spencer would make no distinction between the enactment of the Statute of Laborers by a Parliament representing the landed interests and the enactment of an hours-of-labor law by a legislature elected by universal suffrage. To him, "the liberty which a citizen enjoys is to be measured, not by the nature of the governmental machinery he lives under, whether representative or other, but by the relative paucity of restraints it imposes on him."[44] Thus the use of economic pressure, permitted under Anglo-American law in the absence of statute, excluded from natural rights by Locke but approved on grounds of utility by Bentham and Mill, becomes for Spencer a natural right by which legislation may be tested. In England the criterion is merely political or "moral," but in the United States it becomes judicial through fusion with the constitutional check of the due process clauses. Of course, "The Fourteenth Amend-

interfered with—remain possessed of just as much liberty of action as before." *Justice*, c. XV, s. 69.

[41] "Of course with the right of free exchange goes the right of free contract; a postponement, now understood, now specified, in the completion of an exchange, serving to turn the one into the other." *Ibid.*, s. 70.

[42] "The system must be that of *contract* or that of *status*—that in which the individual is left to do the best he can by his spontaneous efforts and get success or failure according to his efficiency, and that in which he has his appointed place, works under coercive rule, and has his appointed share of food, clothing, and shelter." *From Freedom to Bondage*, par. 7. In *Man versus the State*, p. 156 in the American critical edition edited by Truxton Beale. In illustrating his point, Spencer seems to admit that the condition of the enlisted soldier in the English army is not pure status. *Ibid.*, par. 9, p. 157. This surely undermines his absolute antithesis.

[43] *From Freedom to Bondage* is the title of the essay from which the preceding quotation is made. See preceding note.

[44] *The New Toryism*, fifth par. from the end. In *Man versus the State*, p. 26 in the American critical edition.

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ment does not enact Mr. Herbert Spencer's *Social Statics*";[45] but it is significant that this famous observation was made by Mr. Justice Holmes in the course of a *dissenting* opinion.

This is not to imply that the Supreme Court has consistently protected the freedom of contract from all manner of legislative interference. Even if we confine ourselves to the consideration of employment contracts, as to which judicial disapproval of legislative regulation has been especially pronounced, we find that there are many more decisions upholding than invalidating statutory prescription of contractual terms. The Supreme Court has sustained legislation prescribing the character, methods, and time of payment of wages by requiring the redemption in cash of store orders issued for wages,[46] prohibiting the graduation of miners' pay according to the weight of coal after screening,[47] prohibiting the payment of seamen's wages in advance,[48] and regulating the time when wages shall be paid to employees in certain specified industries;[49] it has upheld the statutory limitation of hours of labor for women,[50] and similar limitation for men in particularly injurious occupations,[51] and also in mills and factories where the statute allows a limited overtime, to be paid for at a more than proportionate rate;[52] it has approved the enlargement of the responsibility of employers to employees by employers'

[45] Lochner v. New York, 198 U.S. 45, 75 (1905).

[46] Knoxville Iron Co. v. Harbison, 183 U.S. 13 (1901); Dayton Coal and Iron Co. v. Barton, 183 U.S. 23 (1901); Keokee Coke Co. v. Taylor, 234 U.S. 224 (1914).

[47] McLean v. Arkansas, 211 U.S. 539 (1909); Rail and River Coal Co. v. Ohio Industrial Commission, 236 U.S. 338 (1915).

[48] Patterson v. The Eudora, 190 U.S. 169 (1903).

[49] St. Louis, I. M. & S. Railway Co. v. Paul, 173 U.S. 404 (1899); Erie Railway Co. v. Williams, 233 U.S. 685 (1914); Strathearn S.S. Co. v. Dillon, 252 U.S. 348 (1920).

[50] Muller v. Oregon, 208 U.S. 412 (1908); Riley v. Massachusetts, 232 U.S. 671 (1914); Hawley v. Walker, 232 U.S. 718 (1914); Miller v. Wilson, 236 U.S. 373 (1915); Bosley v. McLaughlin, 236 U.S. 385 (1915).

[51] Holden v. Hardy, 169 U.S. 366 (1898).

[52] Bunting v. Oregon, 243 U.S. 426 (1917).

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liability[53] and workmen's compensation[54] legislation, even where the statute prohibits any contractual modification of the standard set by law; and it has sustained the controversial Adamson Law of 1916 which established an eight-hour day for certain classes of employees of interstate carriers and prescribed temporarily a scale of minimum wages with proportionate increases for overtime.[55]

On the other hand, the only labor laws disallowed by the Supreme Court in the interest of freedom of contract[56] have been a ten-hour law for employees in bakeries and confectioneries,[57] legislation undertaking to protect trade union members from discrimination by their employers,[58] the Kansas Industrial Court Act,[59] and minimum wage legislation.[60] However, the court has fairly consistently maintained the position that "freedom of contract is .... the general rule and restraint the exception, and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances."[61] It is exceedingly rare for a statute to be upheld merely because it is not arbitrary, on the theory that "the liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint,—not immunity from reasonable

[53] Chicago, B. & Q. Railroad Co. v. McGuire, 219 U.S. 549 (1911); Second Employers' Liability Cases, 223 U.S. 1 (1912).

[54] New York Central Railroad Co. v. White, 243 U.S. 188 (1917); Mountain Timber Co. v. Washington, 243 U.S. 219 (1917).

[55] Wilson v. New, 243 U.S. 332 (1917).

[56] The interesting labor legislation case of Truax v. Corrigan, 257 U.S. 312 (1921), involves issues of property and equal protection but is not concerned with liberty of contract.

[57] Lochner v. New York, 198 U.S. 45 (1905).

[58] Adair v. United States, 208 U.S. 161 (1908); Coppage v. Kansas, 236 U.S. 1 (1915).

[59] Wolff Packing Co. v. Kansas Court of Industrial Relations, 262 U.S. 522 (1923); Wolff Packing Co. v. Kansas Court of Industrial Relations, 267 U.S. 552 (1925).

[60] Adkins v. Children's Hospital, 261 U.S. 525 (1923); Murphy v. Sardell, 269 U.S. 530 (1925).

[61] Adkins v. Children's Hospital, 261 U.S. 525, 546 (1923). Cf. Wolff Packing Co. v. Kansas Court of Industrial Relations, 262 U.S. 522, 534 (1923).

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regulation to safeguard the public interest."[62] The opposing formulas are in the words of Justices Sutherland and Hughes respectively.

A great variety of reasons have been given to support the numerous "exceptions" to the "rule" of freedom. In at least one case the court has attached significance to the likelihood of fraud in the wage practice prohibited by the legislature;[63] in others, the legislature's control over the employment contract has been rested on its reserved power to amend the charter of domestic corporations;[64] special legislation in the interest of seamen has been sustained as an offset to the seaman's peculiar subjection during the term of his employment;[65] the limitation of contractual freedom by employers' liability legislation has been allowed as a natural corollary of statutory power to change the standard of liability.[66] Various other decisions have been rested on grounds of a more general nature which call for more extended notice.

When the contested legislation is recognized as designed to protect third persons rather than the contracting parties, the battle is generally won. Certain Supreme Court opinions show clear agreement with John Stuart Mill's position that "power can be rightfully exercised .... to prevent harm to others."[67] This principle is strikingly applied in the Oregon laundry case (the leading case on the limitation of hours of labor for women) and in the leading workmen's compensation case. In the former, Mr. Justice Brewer stresses "the influence of vigorous

[62] Miller v. Wilson, 236 U.S. 373, 380 (1915). Substantially the same formula appears in Mr. Justice Hughes' opinion in Chicago, B. & Q. Railroad v. McGuire, 219 U.S. 549, 567 (1911). In Bunting v. Oregon, 243 U.S. 426 (1917), there is no explicit formula, but this is another of the few cases in which the Supreme Court has seemed to lay the burden of proof on those attacking the contested labor legislation.

[63] McLean v. Arkansas, 211 U.S. 539, 550 (1909).

[64] St. Louis, I. M. & S. Railway Co. v. Paul, 173 U.S. 404, 409 (1899); Erie Railway Co. v. Williams, 233 U.S. 685, 700-701 (1914).

[65] Patterson v. The Eudora, 190 U.S. 169, 175 (1903).

[66] Second Employers' Liability Cases, 223 U.S. 1, 52 (1912).

[67] See *supra*, p. 340, and note 33.

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health [of women] upon the future well-being of the race,"[68] and in the latter Mr. Justice Pitney reasons: "The subject matter in respect of which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare. . . . . It cannot be doubted that the state may prohibit and punish self-maiming and attempts at suicide; . . . . and the authority to prohibit contracts made in derogation of a lawfully-established policy of the state respecting compensation for accidental death or disabling personal injury is equally clear."[69] If injury to others is involved in these situations, it would seem that no contractual relation is immune from legislative attack. Certainly under modern industrial conditions man does not live unto himself alone.

Even more far-reaching in its implications is the premise that a legislature may regulate the terms of a contract where the parties are unequal in bargaining power. It seems that this theory would support any legislation whatsoever, for the very departure of any contractual terms from the standard set by the legislature as fair suggests that the parties are *not* on an equality in their bargaining. Perhaps the Supreme Court has discovered the dangerous potentialities of this formula, for it has not been invoked since 1908. Its most striking application is in Holden v. Hardy,[70] the very first labor case to come before the court (in 1898). Mr. Justice Brown, approving an eight-hour law for miners and employees in smelting plants, observes in this case: "The legislature has also recognized the fact . . . . that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their em-

[68] Muller v. Oregon, 208 U.S. 412, 422 (1908). This point probably never occurred to Mill, who disapproved labor legislation affecting women. See *supra*, p. 339, and note 25.

[69] New York Central Railroad Co. v. White, 243 U.S. 188, 206-207 (1917).

[70] 169 U.S. 366 (1898).

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ployees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, freely exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.'"[71]

Similar views of the supreme court of Tennessee are approved by the United States Supreme Court in the leading store order case;[72] and the limitation of a woman's working hours is upheld in the Oregon laundry case quite as much because "it is still true that in the struggle for subsistence she is not an equal competitor with her brother'"[73] as because of the effect of her health on future generations.

But the most remarkable excuse of all for making an exception in favor of restraint is found in the famous "Adamson Law" case, Wilson v. New.[74] Chief Justice White emphasizes the interest of the public in continued railroad service,[75] but clinches his argument for the validity of the law with this amazing observation: "It certainly cannot be said that the act took away from the parties, employers and employees, their private right to contract on the subject of a scale of wages, since the power which the act exerted was only exercised because of the failure of the parties to agree, and the resulting necessity for the lawmaking will to supply the standard rendered necessary by such failure of the parties to exercise their private right.'"[76]

This cannot be better answered than in the words of Mr. Justice Pitney's dissent: "The right to contract is the right to say by what terms one will be bound. It is of the very essence of the right that the parties may remain in disagreement

[71] *Ibid.*, 397.
[72] Knoxville Iron Co. v. Harbison, 183 U.S. 13, 20-21 (1901).
[73] Muller v. Oregon, 208 U.S. 412, 422 (1908).
[74] 243 U.S. 322 (1917).
[75] *Ibid.*, 347-348, 350-351.
[76] *Ibid.*, 353.

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if either party is not content with any term proposed by the other. A failure to agree is not a waiver but an exercise of the right,—as much so as the making of an agreement.''[77]

To this it is only necessary to add that a deadlock is most likely to occur when the parties are most nearly equal in their bargaining power. The deadlock theory added to the bargaining inequality theory would include within constitutional limits the entire range of legislative interference with private contract.

It is clear from the foregoing that the Supreme Court has repeatedly permitted statutory prescription of contractual terms, and that some of the reasons advanced for its decisions are capable of extension to the point of permitting the complete substitution of status for contract. That they have no such significance is, however, clear upon an examination of the court opinions condemning labor legislation as in violation of constitutional liberty of contract. The decisions invalidating labor laws may be few in number, but it must be remembered that they illustrate ''the general rule.''[78]

It was in 1897 that the right of liberty of contract was first derived from the ''life, liberty, [and] property'' of the Fourteenth Amendment, in the opinion in a well-known insurance case.[79] Freedom to follow any of the ordinary callings of life is here instanced as an important phase of liberty,[80] and ''the right to make all proper contracts in relation thereto'' is deduced from ''the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property.''[81] The reasoning of Mr. Justice Peckham is exactly that of Herbert Spencer. However, the court, speaking by the same justice, departs somewhat from this philosopher's views when discussing liberty of contract in the labor law case of Lockner v. New

[77] *Ibid.*, 387.
[78] See *supra*, p. 344, and note 61.
[79] Allgeyer v. Louisiana, 165 U.S. 578 (1897).
[80] *Ibid.*, 590.
[81] *Ibid.*, 591.

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York.[82] The New York ten-hour law for bakeries and confectioneries is invalidated on the ground that 'statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interference with the rights of the individual'';[83] but Mr. Justice Peckham observes that the statute might be saved if there were fair ground . . . . to say that there is material danger to the public health or to the health of the employees, if the hours of labor are not curtailed.''[84] It is most unlikely that Spencer would approve the concessions in this dictum, but the decision itself is clearly in accord with his views. It is in his dissent in this case that Mr. Justice Holmes makes his famous reference to Spencer's *Social Statics*.[85]

Further expositions of liberty of contract are found in the Supreme Court opinions concerned with legislation prohibiting discrimination against union employees and the exaction of undertakings that no union will be joined during the period of employment. In Adair v. United States,[86] involving an act of Congress applicable to interstate railroads, the opinion, instead of merely deciding that the legislation is beyond the scope of the commerce power, opens with an elaborate argument to the effect that the statute is a violation of the Fifth Amendment. Mr. Justice Harlan stresses the legal right of both employer and employee to terminate a contract-at-will at mere caprice, and concludes that ''any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.''[87] The assumption of an inherent, if not inalienable, natural right of freedom of contract is hardly weakened by the insistence upon the element of equality in this right.

Even more significant is the opinion of Mr. Justice Pitney

[82] 198 U.S. 45 (1905).
[83] *Ibid.*, 61.
[84] *Ibid.*
[85] *Ibid.*, 75. See *supra*, p. 343, and note 45.
[86] 208 U.S. 161 (1908).
[87] *Ibid.*, 175.

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in the subsequent case of Coppage v. Kansas,[88] involving a similar statute enacted by a state. Not only is it pointed out that the use of economic pressure is vitally different from legal duress,[89] but it is also explained that inequality of bargaining power is a necessary feature of the American constitutional system. This part of the opinion should be quoted in full: "Indeed, a little reflection will show that wherever the right of private property and the right of free contract coexist, each party when contracting is inevitably more or less influenced by the question whether he has much property, or little, or none; for the contract is made to the very end that each may gain something that he needs or desires more urgently than what he proposes to give in exchange. And, since it is self-evident that, unless all things are held in common, some persons must have more property than others, it is from the nature of things impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights. But the Fourteenth Amendment, in declaring that a state shall not 'deprive any person of life, liberty, or property without due process of law,' gives to each of these an equal sanction: it recognizes 'liberty' and 'property' as coexistent human rights, and debars the states from any unwarrantable interference with either..... And since a state may not strike them down directly it is clear that it may not do so indirectly, as by declaring in effect that the public good requires the removal of those inequalities that are but the normal and inevitable result of their exercise, and then invoking the police power in order to remove the inequalities, without other object in view. The police power is broad, and not easily defined, but it cannot be given the wide

[88] 236 U.S. 1 (1915).

[89] "But, aside from this matter of pecuniary interest, there is nothing to show that Hodges was subjected to the least pressure or influence, or that he was not a free agent, in all respects competent, and at liberty to choose what was best from the standpoint of his own interests." *Ibid.*, 8-9.

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scope that is here asserted for it, without in effect nullifying the constitutional guaranty.''[90]

In this admirable philosophical exposition of economic pressure there is no hint of that logical absurdity—an inalienable right of contract—or of any other inalienable right,[91] but there is nevertheless a distinct natural law flavor to the whole. There is much in Mr. Justice Pitney's argument that is reminiscent of both Locke and Spencer, though it will be remembered that Locke explains inequality in possessions on the basis of convention and not of nature.

The Supreme Court opinions in the Kansas Industrial Court cases[92] revolve about the issue of the interest of the public in compulsory arbitration. The Kansas statute, far more clearly than most labor laws, is designed to prevent the abuse of contractual freedom to the injury of third persons, and most critics would probably see greater public detriment in industrial warfare than in the impaired health of future mothers or in dependence resulting from uncompensated industrial accidents. Yet the Supreme Court, in spite of having upheld the limitation of women's hours and workmen's compensation acts, slights the broader aspects of public policy in the Kansas cases and confines itself to a determination of the narrow issue whether the business of preparing food is ''so far affected with a public interest that the state may compel its continuance.''[93] This question is answered in the negative, and the court proceeds to the unanimous conclusion that there is nothing to

[90] *Ibid.*, 17-18.

[91] For an instance of insistence upon inalienable rights, see the concurring opinion of Mr. Justice Bradley in Butchers' Union Co. v. Crescent City Co., 111 U.S. 746, 762 (1884). In spite of the justice's surprising reliance upon the Declaration of Independence, this concurring opinion is cited with approval in Allgeyer v. Louisiana, 165 U.S. 578, 589-590 (1897), and this in turn is used to support the condemnation of an hours-of-labor law in Lochner v. New York, 198 U.S. 45, 53 (1905).

[92] Wolff Packing Co. v. Kansas Court of Industrial Relations, 262 U.S. 522 (1923); Wolff Packing Co. v. Kansas Court of Industrial Relations, 267 U.S. 552 (1925).

[93] 267 U.S. 552, 567. Cf. 262 U.S. 522, 539.

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justify either the fixing of wages[94] or the prescription of hours or conditions of labor[95] by the process of compulsory arbitration. The decision is probably influenced by the consideration that employees as well as employers are deprived by the Kansas statute of the possibility of exerting economic pressure to their own advantage; for Chief Justice Taft observes: "The employer is bound by this act to pay the wages fixed, and while the worker is not required to work, at the wages fixed, he is forbidden, on penalty of fine or imprisonment, to strike against them and thus is compelled to give up that means of putting himself on an equality with his employer which action in concert with his fellows gives him."[96] Although an employee's abstract liberty of contract has been subjected to numerous restrictions in his own interest, his substantial economic advantage from organization is here accorded protection in complete disregard of the consequences to the public of a natural right to strike. Possibly, in spite of the apparent approval of Mill's formula in certain earlier cases, the Supreme Court is today more willing to permit legislative restraint of an individual for his own good than for the sake of preventing harm to others.

But for no purpose may regulation go so far as to substitute status for contract. This is clearly brought out in the opinion in the District of Columbia minimum wage case, Adkins v. Children's Hospital,[97] in which Mr. Justice Sutherland carefully distinguishes minimum wage legislation from other statutes regulating the employment contract, especially from statutes limiting the hours of labor. He says: "The statutes mentioned .... deal with incidents of the employment having no necessary effect upon the heart of the contract; that is, the amount of wages to be paid and received. A law forbidding work to continue beyond a given number of hours leaves the

[94] 262 U.S. 522, 544.
[95] 267 U.S. 552, 569.
[96] 262 U.S. 522, 540. Cf. 267 U.S. 552, 563-564.
[97] 261 U.S. 525 (1923).

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parties free to contract about wages and thereby equalize whatever additional burdens may be imposed upon the employer as a result of the restrictions as to hours, by an adjustment in respect of the amount of wages."[98]

This argument has far more force than is conceded by Mr. Justice Holmes in his dissenting observation that "the bargain is equally affected whichever half [wages or hours] you regulate,"[99] for minimum wage legislation is being *added* to other statutes *of established constitutionality* limiting the hours and conditions of labor. Thus the legislature is now prescribing substantially *all* the terms of the employment contract, and thus depriving the employer of his usual advantage from superior bargaining power, whereas previous legislation had merely necessitated his seeking that advantage in one direction rather than another. Mr. Justice Holmes is on much stronger ground when he observes: "The statute does not compel anybody to pay anything. It simply forbids employment at rates below those fixed as the minimum requirement of health and right living. It is safe to assume that women will not be employed at even the lowest wages allowed unless they earn them or unless the employer's business can sustain the burden."[100]

This seems unanswerable, but to Mr. Justice Sutherland it is probably irrelevant. True to the classical economics underlying the philosophy of Bentham, Mill, and Spencer, the last-named justice assumes that there is something ultimate[101] in the terms on which an exchange is made in the absence of legis-

[98] *Ibid.*, 553-554.

[99] *Ibid.*, 569. In Chief Justice Taft's dissenting opinion the same point is made in the words, "In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received, a restriction as to the one is not any greater in essence than the other, and is of the same kind. One is the multiplier and the other the multiplicand." *Ibid.*, 564.

[100] *Ibid.*, 570.

[101] The opinion refers to "the inexorable law that no one can continue indefinitely to take out more than he puts in without ultimately exhausting the supply." *Ibid.*, 557.

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lative coercion.[102] He condemns minimum wage legislation because "the moral requirement implicit in every contract of employment, viz., that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely ignored."[103] That is, to him any new level of equivalence resulting from the operation of a minimum wage law is unnatural and immoral, and freedom to contract or refuse to contract on that basis is no freedom at all. Mr. Justice Sutherland is a thoroughgoing believer in both the natural and the constitutional right to use economic pressure. And he stands at present as the accredited spokesman of the Supreme Court of the United States.

[102] For an interesting discussion of this problem of the exchange level and of the larger problem of the relation of economic pressure to law, see Professor Robert L. Hale's article, "Coercion and Distribution in a Supposedly Non-Coercive State," in 38 *Political Science Quarterly* 470 (1923).

[103] 261 U.S. 525, 558.

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Congress, the Foreign Service, and the Department of State. On July 1, 1924, there became effective an act for the reorganization and improvement of the Foreign Service of the United States, popularly known as the Rogers Act, which had been approved on May 24. That act combined the hitherto separate diplomatic and consular services into a single Foreign Service. Admission to the Foreign Service was for the most part to be upon competitive examination, and promotion was to be based upon merit. The act left to the executive the establishment of the system for ascertaining merit.

Pursuant to the Rogers Act, an executive order of June 7, 1924, created a Foreign Service Personnel Board. The composition of the board was slightly changed by an executive order of February 25, 1928, under the terms of which the board was to be composed of three assistant secretaries of state to be designated by the Secretary of State, and three Foreign Service officers. The three Foreign Service officers, representing both the diplomatic and consular branches, were to constitute the executive committee of the board.

Among other things, the Foreign Service Personnel Board was charged with the duty of submitting to the Secretary, when vacancies should arise in the Foreign Service, lists of officers whose records of efficiency entitled them to advancement in the service and who were therefore recommended for promotion. A departmental order directed the executive committee to take possession of all records relating to the personnel of the diplomatic and consular services and to keep the efficiency records of all Foreign Service officers. The order also provided that at least once a year, or whenever the Secretary of State should so instruct, all personnel records, ratings, and accumulated material should be examined impartially by a board of review and a report rendered to the Foreign Service Personnel Board as to the relative standing of officers. The board of review was to consist of five Foreign Service officers of high rank designated for the purpose by the Secretary of State. Under this arrangement, therefore, three Foreign Service officers kept the efficiency records for the service; five other Foreign Service officers reviewed these records and reported on the relative standing of officers; three assistant secretaries of state joined the three

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officers first mentioned in making recommendations for promotion based upon the ascertained relative standing.

After a short time, complaints were registered against the operation of the system. Congressmen became interested, and on February 16, 1927, Representative Edwards of Georgia introduced a resolution calling upon the Secretary of State for certain information. The language of the resolution showed that its author believed that officers in the consular branch were being discriminated against in favor of those in the diplomatic branch. In his reply of June 21, 1927, the Secretary stated that prior to the passage of the Rogers Act separate systems of efficiency records were maintained for diplomatic and consular officers. Due to the difficulty of reducing these records to a common denominator, separate records for the two services had been temporarily maintained after the effective date of the Rogers Act. An investigation of the results of the operation of this temporary system revealed an inequitable situation with respect to certain consular officers. The Secretary added that steps had been taken to correct this situation.

On December 17, 1927, Senator Harrison of Mississippi introduced a resolution directing the Committee on Foreign Relations to investigate the operation of the Rogers Act, and particularly the work of the Foreign Service Personnel Board. Without waiting for action on the resolution, the committee directed a sub-committee to conduct an investigation. The sub-committee received testimony in executive session and the record has not been printed; but in the language of the sub-committee's report, adopted by the full committee, "there were intimations of favoritism in plenty" coming from Foreign Service officers whose promotion had not been as rapid as they had expected.

The weight to be given to such intimations is for individual determination. It is only human for officers who have not received promotion to believe themselves the victims of favoritism; and it is possible that some part of the dissatisfaction manifested before the sub-committee was shown by officers who, under any system of ascertaining merit, would not have proved as deserving of promotion as the officers who did receive promotions.

In one respect the committee report is open to question. Figures are introduced to show that certain officers in the lower classes have been in the service for a much longer period that have other officers in higher classes. The fact is that the disparity existed before the Rogers Act was passed, and in many respects that act merely cemented the existing

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situation. Thus, diplomatic officers on July 1, 1924, were younger both in years and in experience than the consular officers with whom they were classed automatically by the Rogers Act. Any investigation of the operation of the Rogers Act which is directed toward a study of the comparative age and experience of officers is misleading if it fails to take this fact into account.

On the basis of its investigation, the committee reported that the system set up by executive and departmental orders operated to place the administration of Foreign Service personnel in the hands of that personnel. According to the committee, the assistant secretaries assigned to the Personnel Board were, of necessity, too much occupied with matters of policy to give adequate attention to the claims which each of the several hundred men in the field might have for promotion. The report recommended that the handling of Foreign Service Personnel be divorced from the personnel itself.

On May 3, 1928, Senator Moses, chairman of the sub-committee which made the investigation, introduced a bill for the amendment of the Rogers Act. The bill passed the Senate, but was not acted upon by the House. In a slightly modified form, it was reintroduced by its author on April 18, 1929, and is now pending. The most important provisions of the present bill relate to the administration of Foreign Service personnel. A Bureau of Personnel, to which Foreign Service officers may not be appointed, is to be established under the supervision of an additional assistant secretary of state. Efficiency records are to be kept by this bureau, but for their accuracy and impartiality the supervising assistant secretary is to be solely responsible. A broadening of the scope of the record upon which merit is ascertained is clearly intended by the bill. The Bureau of Personnel is charged with the preparation annually of a list of all Foreign Service officers graded according to their relative efficiency, the list to show which officers are recommended for promotion. Before becoming effective in so far as it affects promotions, the list must receive the approval of a board of selection for Foreign Service officers, composed of the assistant secretary as chairman, one member of the personnel office, the legal adviser, and two other competent persons to be appointed annually by the Secretary of State, not more than one of whom may be a Foreign Service officer.

In the House, Representative Edith Rogers introduced a bill which also had as its primary purpose the setting up of a new system of personnel administration. While there is a considerable difference in the

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language of the Moses and Rogers bills, their common intent was to destroy the existing system of personnel administration and to substitute for it one in which Foreign Service officers should have no part. The Rogers bill was not reported from committee, and it died with the end of the Seventieth Congress. To date, it has not been reintroduced.

Obviously, a situation had arisen in which the existing system of personnel administration was under attack. Such a situation inevitably restricted the usefulness of the existing machinery. The board of review was abolished by a departmental order of August 11, 1928, which transferred its functions to the Personnel Board. Not only had the board of review been the subject of attack; the need for a separate body to perform those functions which had been entrusted to it was debatable, and bringing five officers into the department to serve on the board was a drain upon the higher classes of the service and upon the funds available for transportation. On September 11, 1929, the President issued an executive order reconstituting the Foreign Service Personnel Board and abolishing the executive committee. Since September 16, 1929, the only members of the Personnel Board have been three assistant secretaries of state. The executive order also provides for a Division of Foreign Service Personnel, to which are to be attached not more than three personnel officers, at least one of whom shall be a Foreign Service officer of high rank to be chosen by the Secretary upon the recommendation of the Personnel Board. A departmental order amplifying the executive order was signed on December 30, 1929.[1]

[1] This order defines the duties of the division as follows: "(1) To maintain contact with Foreign Service officers and employees while on visits to the United States; (2) to discuss with Foreign Service officers ways for the development and improvement of their work; (3) to confer with the geographical divisions of the Department concerning the work of Foreign Service officers; (4) to interview applicants and prospective applicants for the Foreign Service; (5) to examine and recommend for appointment applicants for positions as subordinate employees in the Foreign Service; (6) to collect, collate, and record pertinent data relating to Foreign Service personnel; (7) to keep the efficiency records of all Foreign Service officers and employees; (8) to hold strictly confidential all personnel records of the Foreign Service, and to reveal no papers, documents, data, or reports relating thereto, except to the Secretary of State and to the members of the Personnel Board; (9) to keep the records of the board of examiners for the Foreign Service and attend to all details connected with the holding of examinations for the Foreign Service; (10) to submit recommendations on all matters within the

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The problem of accurately determining relative merit presents many difficulties. Functions performed by Foreign Service officers are exceedingly diverse. The geographical extent of the service and the wide variations in the conditions under which officers perform their duties contribute to the difficulty of ranking them in the order of merit. It would be almost inconceivable that the first agency instituted to ascertain relative merit in the combined diplomatic and consular services should have hit upon a perfect plan. It is to be hoped that the new Division of Foreign Service Personnel, acting under the direction of the Personnel Board, will see fit to review the system of efficiency records now used with a view to determining whether it accurately reflects comparative merit throughout the service. There are two aspects which stand out as challenging the attention of the new division. The first is the comparative rapidity of promotion of diplomatic as opposed to consular officers; the second is the comparative rapidity of promotion of Foreign Service officers who have served or are serving in the Department as opposed to those who have not had such service.

Although it is probable that the preponderance of diplomatic promotions has been exaggerated, it is true that there has been a somewhat greater percentage of promotions on the diplomatic than on the consular side. The facts appear to be about as follows. Through December 1, 1929, the 287 consular officers who had been assigned to Classes II-VIII on July 1, 1924, and who were still in the service, had received a total of 275 promotions, while the 72 comparable diplomatic officers had received 79 promotions.

The reason for the greater number of diplomatic promotions may possibly be that the system of efficiency records in its present stage of development has tended to favor the diplomatic officers. There are fewer officers on the diplomatic side; they are stationed at posts which come most directly under the observation of the personnel officers; their work is of such a character as to attract more frequent attention. This is true particularly of the diplomatic officers in the upper classes, where the preponderance of diplomatic promotions is most evident. The possibility that the system hitherto used to determine relative merit operates to the disadvantage of consular officers should be considered by the new personnel administration.

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authority of the Personnel Board; (11) to attend, through the personnel officers assigned to the division, the meetings of the Personnel Board when so directed."

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The second aspect mentioned above has resulted from the needs of the Department of State. The Rogers Act contemplated the detail to the Department from time to time of Foreign Service officers who would give to it the benefit of their experience and counsel. Due to a shortage in the Department's personnel, it has been necessary to bring into the Department many more Foreign Service officers than the act contemplated. Naturally, the executive committee could more easily estimate the work of officers serving in the Department than the work of the officers in the field. An undue prominence of the service of the former group may have resulted, which in its turn might account for the fact that there has been a proportionately larger number of promotions of men with Department service than of men without such service. If this be the case, it would be well for the new personnel administration to be on guard against the inevitable tendency to give undue prominence to the efficiency records of men with Department service.

This particular problem may be largely solved if the increased appropriations requested by the Secretary and approved by the Bureau of the Budget and the President are granted by Congress. When the State Department is provided with enough officers to discharge its functions, a large number of Foreign Service officers who have been detailed to the Department can be returned to the field; and the situation will tend to correct itself.

The new system of personnel administration began functioning in an atmosphere clouded by suspicion. The feeling which had been aroused was probably sufficient to cause some persons to question the integrity of any system that might be set up. In its very nature, the problem confronting the Division of Foreign Service Personnel is one which requires time for its solution. Meanwhile the division is entitled to the presumption that it will efficiently perform the duties with which it is charged.

The estimates for 1931 provide for 67 new officers and for promotions for 178 officers. The promotions will give the new personnel system its first severe test. Prior to July 1 of the present year, the Division of Personnel should be able to review the whole of the personnel record. Such a review will serve to allay suspicions regarding personnel administration; it will give the division an excellent background for its future work; it will make possible the correction of any injustice which may have been done; and it will assist the division in deciding whether

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the present system of determining merit should be continued—a matter of fundamental importance.

The problem of personnel administration in the Foreign Service appears to be on the way to solution. Probably the new system is not perfect; further changes may prove necessary. It does have the advantage of having been set up under executive and departmental orders; and defects which may appear can be corrected by similar orders. If a system of personnel administration is established by legislative provision, difficulties which may appear in practice can be cured only by later legislation, the obtaining of which may be a tedious process. It would seem to be the wiser part for Congress to withhold its hand at this time in order that the new system may have a chance to prove its merits. To that end it is believed that those portions of the bills sponsored by Senator Moses and Mrs. Rogers which set up a system of foreign service personnel administration should be deleted; though it is to be hoped that other provisions of those bills which would operate to strengthen the service will find their way into the law.

It is easy for a professor of political science to point out to his class that there are two major divisions of the work of the Secretary of State; that while the Secretary is responsible for policy, he is also responsible for the administration of the Department over which he presides. It is more difficult for the Secretary to determine how he shall divide his time, attention, and energy between the two. To most men the policy phase is the more attractive; and it has been charged that some recent secretaries of state have been too much immersed in policy to be able to devote much attention to the needs of the Department. To this has been attributed in large part the unsatisfactory position in which the Department has been placed.

The conditions themselves are fairly well known. There has been an insufficient number of officers in the Department; such as there are have been poorly paid; and the turnover has been large. A picture of the situation may be drawn from the fact that if Congress approves the 1931 estimates, forty Foreign Service officers will be sent back to the field. These officers were brought into the Department to do the work which should have been done by officers of the Department—officers who were non-existent because of a lack of appropriations. The result was unfortunate both for the Foreign Service and for the Department. Some consular offices were closed, some were left in charge of vice consuls or clerks, some were operating with an insufficient personnel;

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some legations were deprived of secretaries—all in order that the Department might be able to carry on its work.

From the standpoint of the Department the situation was almost as bad. To do an ever-increasing amount of work it had a small personnel, which appropriations would not permit it to increase adequately and at times required that it decrease. Foreign Service officers were drawn from the field to do work which had to be done. But the requirements of the field, and the limitation imposed by the Rogers Act upon the length of time a Foreign Service officer might remain in the Department, caused a continual change in this group of officers.

Salaries in the Department have consistently been lower than those in the Foreign Service. State Department officers have had the doubtful pleasure of seeing higher salaried Foreign Service officers engaged in less important work, or in extreme cases of having them as assistants. Absolutely, as well as relative to the Foreign Service, salaries in the Department, considering positions and not persons, have been too low. A comparison of the salaries paid with the importance of the work to be done and the responsibility imposed upon, and the qualifications which should be required of, the men who do it will demonstrate this. With too few officers, and those underpaid, it is no occasion for surprise that the turnover has been large.

That a country as wealthy as the United States, with a foreign office whose income from fees is almost as large as its disbursements, should understaff and underpay the department which is largely responsible for the success or failure of its foreign relations is an obvious matter for criticism. As the secretary receives credit for the success of the department which he heads, so must he assume responsibility when the conditions under which it works are unsatisfactory.

For several years estimates of appropriations were prepared with more stress on the economy enjoined by the White House than on the needs of a department and a foreign service whose duties were increasing by leaps and bounds. Estimates were prepared with a view to the minimum amounts needed to permit the Department to function, rather than with a view to the amounts needed to permit it to function with greatest efficiency. The estimates were then sent to the Director of the Budget, whose attitude, in some cases at least, appeared to be that the fact that the Department requested a particular amount was sufficient justification for reducing it. State Department officials revealed in reply to questions by appropriation committees that they

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could not understand how the Director arrived at the sums incorporated in the budget transmitted to Congress.

With estimates pared to the bone before they left the Department, it would appear that the responsible head of the Department should have known the reason for every reduction in the estimates. The Department's budget is handled very efficiently by an assistant secretary of state, of whom it was said on the floor of the House that there is no abler man in government service. But an assistant secretary cannot have the prestige or the close contact with the President which is naturally the lot of the Secretary. The Secretary's responsibility for the successful conduct of foreign relations should have made him take up with the President the plight in which the Department was being placed because of lack of adequate appropriations.

The situation has been changed recently. There is a new administration and a new atmosphere. Apparently the Department is to be judged on its ability to produce results rather than to reduce expenditures. The new Secretary of State appears to have seen the importance of his duties as head of the department which is charged with the conduct of foreign relations. The departmental estimates for 1931 indicate that they were prepared with a view to the real needs of the service. For the first time in the history of the budget, the Secretary of State appeared before the Bureau of the Budget to defend his estimates. The result has been an increase of over two and three-quarters millions of dollars in the estimates for the Department and the Foreign Service as compared with the appropriations for the current fiscal year. The increase can be defended easily, and since Congress within recent years has been quick to see the needs of the Department as portrayed by the estimates, it seems probable that the increase will be granted.

The Secretary's task is well begun, but only begun. In spending the additional funds which it is to be hoped that Congress will grant, he will be confronted with the Classification Act of 1923 and the action of the Personnel Classification Board under it. There is a very real question whether the act properly should apply to the officers of the State Department, in view of the character of their duties. There is a second question whether the Classification Board in applying the act has properly allocated the positions in the Department. These questions are not new. They are at the basis of the bill which was introduced in the House on April 19, 1928, and reintroduced on April 15, 1929, by Repre-

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sentative Stephen G. Porter, chairman of the Committee on Foreign Affairs. That bill provides for the organization of officers and employees of the Department employed at Washington into the Home Service of the Department of State. These officers are to be grouped into seven classes, with salaries ranging from $9,000 for officers in Class I to $3,000 for those in Class VII. The administration of Foreign Service and Home Service personnel is to be vested exclusively in an assistant secretary of state who has not been a Foreign Service officer within seven years next preceding his appointment.

With the large number of officers to be added to the State Department personnel in the event that the increased estimates are granted, the time seems ripe for a thorough investigation of the operation of the Personnel Classification Act in the Department of State. Legislation on the subject may take some time. Meanwhile funds will be available for increases in salaries and the addition of new officers. While an exceptionally large number of promotions and new appointments will probably be made during the next fiscal year, the personnel problem is a continuing one and should be considered as such. So far as an outsider can tell, at the present time it is impossible to place responsibility for either appointments or promotions. And as for separations from the Department as a disciplinary measure or as the natural consequence of poor work, there are none. Merit and efficient service should be assured a reward; but just as surely, lack of ability and absence of diligence should be punished, with separation from the Department as the certain fate of the man who persistently fails to carry his share of the load.

It may be said that these statements are so obvious as to be axiomatic. But their application is difficult at best, and almost impossible where responsibility cannot be traced. Nearly all of the Department's work involves the coöperation of several divisions; there is a joint responsibility for the quality of the output. At present there is no effective check upon the contribution of each participant. To establish such a check, to insure fairness as between individuals in the rating of work, to obtain the fullest harmony among the several divisions—in short, to utilize the personnel of the Department to the fullest and fairest extent—would seem to require a much greater degree of centralization than can be found at the present time. Adequate appropriations will not necessarily insure an adequate personnel. With Congress supplying the money, we may fairly expect the Department to do its part

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by using that money to give to the country a foreign office manned by competent persons whose qualifications meet the demands of their positions.

With due appreciation of the importance of the things which the Secretary has accomplished, it is submitted that the most difficult part of his task lies ahead of him. A proper expenditure of the increased funds will benefit the Department and the country as a whole in the more effective conduct of foreign relations; but an improper expenditure can do incalculable harm.

The easiest disposition of the funds available for increases in salary would be to make horizontal increases. But such a step would be decidedly unfortunate. The Department has not offered as attractive a career in the past as it now begins to promise. Competition for positions has not been so keen as it should have been. There may be men in the Department's service who would not have been acceptable to the Department had a larger range of choice been available. Discrimination should be used in the making of promotions; for promotions in some cases may result not only in the retention of undesirable men, but also in the eventual placing of mediocrity or worse in high places where it will take its toll through its own shortcomings and in driving from the Department's service newer, more able, and better qualified men who refuse to serve it. The qualifications and work of every man in the Department should be carefully studied before promotions are made.

The problem with respect to additions to personnel is akin to that of promotions. There is the possibility of bringing in a group of men who will improve the caliber of the work of the Department over a long period to come. But there is also the possibility of filling the Department with poor material which will block its progress until nature eventually removes them from the scene. It is conceivable that some Foreign Service officers now detailed to the Department will desire to be transferred permanently to the Department. Qualifications for Department service are not identical with those for the Foreign Service. The fact that a man passed a Foreign Service examination is not necessarily a guaranty that he can serve effectively in the Department. The application of a Foreign Service officer should be considered exactly as other applications, and such an officer should be appointed to the Department only if it is clear that he is the best man the Department can get for the position. Every applicant should be carefully studied, not only for his qualifications for the job at hand, but for his

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place in the scheme ten or twenty years from now. If the recent past is any indication of the future, in a quarter of a century or thereabouts the Department of State may be the principal foreign office in the world, and at the same time the principal target for adverse criticism from all parts of the globe. Its leaders should be the best the country affords; it may be that they will be the men whom Secretary Stimson appoints under the 1931 estimates. The Secretary's responsibility is enormous. His task will not be made lighter by the pressure which will undoubtedly be brought to bear on him by the political spoilsmen. Selecting forty or more permanent officers for the Department will be a slow process. Choosing them wisely will probably be the greatest contribution the Secretary can make to the success of his country's foreign relations; and it will be one equalling that made by any of his predecessors.

IRVIN STEWART.

The American University.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY CLYDE L. KING
University of Pennsylvania

State Constitutional Development Through Amendment, 1929. In 1929 an unusually small number of states amended their fundamental law, especially as contrasted with 1928, when eighteen states amended their constitutions.[1] All of the five states of the 1929 group lie in the eastern half of the country. In continuance of previous practice in these notes, the constitutional changes made are here treated by states rather than by subject matter; and the effect of each amendment upon the relevant earlier section of the constitution is indicated where not otherwise obvious.

New York. All five amendments proposed were adopted. One of these gives a preference in appointment and promotion in the civil service of the state to honorably discharged soldiers, sailors, marines, or nurses of the army, navy, or marine corps of the United States, who have an existing disability received in the performance of duty in any war and who were at the time of their entry and at the time of service, and still are, citizens and residents of New York State.[2] Article 5, Section 6, of the constitution is thereby amended by broadening the preference which formerly was extended only to honorably discharged soldiers and sailors of the Civil War. A second amendment permits the legislature to add to those classes of persons who may vote by absentee ballot (Article 2, Section 1a) any inmates of the United States veterans' bureau hospitals.[3] Article 7, Section 3, is expanded to permit the state to contract debts to suppress forest fires without submitting the question of the debt to a vote of the people.[4] The other purposes for which debts may be contracted without submission are to repel invasion, suppress insurrection, and defend the state in time of war.

In the interest of home rule in Westchester and Nassau counties, in the vicinity of the city of New York, Article 3, Section 26, has been

[1] In 1927, seven states amended their constitutions.
[2] Yes, 1,071,517; No, 404,454.
[3] Yes, 1,119,164; No, 256,664.
[4] Yes, 959,454; No, 313,512.

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altered to limit the power of the legislature with respect to laws affecting those counties. All such laws which have to do with the creation or abolition of elective offices in those counties, the method of removal of elective officers, the reduction of salaries or changes of terms of office of elective officers during their terms, or which abolish, transfer, or curtail any of their powers, or change their voting or veto powers, or laws which affect the form or composition of a legislative body, or provide a new charter for the county, are to be effective only upon approval by the electors of the particular county. All other special or local laws affecting these counties, after passage by the legislature, must be transmitted to the clerk of the governing elective body of the county affected, to be approved or disapproved by such body after public hearing, and by the executive head of the county if there be one. Any such bill is to be returned within fifteen days to the clerk of the house from which it was sent, or to the governor if the legislative session has terminated, stating whether the county has or has not accepted it. No bill may take effect until sixty days after approval by the governor or adoption by the legislature over the governor's veto; or until approved by the electors of the county, if within sixty days a petition protesting against such bill be filed with the county clerk by electors numbering five per cent of the votes cast in the county at the last election for governor. If during a legislative session a bill is returned to the legislature without acceptance by the county, or is not returned within fifteen days, it may again be passed by the legislature and acted upon by the governor. But it may not take effect unless and until adopted and approved by the electors of the county.[5]

Article 6, Section 17, was changed by the addition of a few lines, in order to permit the legislature to transfer jurisdiction in criminal matters from justices of the peace to inferior local courts of criminal jurisdiction, the territorial jurisdiction of which (outside of cities) may be defined by the respective boards of advisors.[6]

Maine. The second largest group of constitutional amendments is found in this state. The executive council of seven persons provided to advise the governor is to be chosen biennially instead of annually as provided in Article 5, Part 2, Section 2. The manner of filling vacancies in the council has been changed, in that the governor, with the advice and consent of the council, shall, within thirty days from the

[5] Yes, 818, 497; No, 327,904.
[6] Yes, 889, 689; No, 312,622.

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creation of said vacancy, appoint a councillor from the same district in which the vacancy occurred. The oath of office is to be administered by the governor. The councillor thus appointed shall hold office until the next convening of the legislature, with the limitation that no more than one councillor shall be elected or appointed from any state senatorial district. These officers are privileged from arrest as are members of the state legislature.[7] Another amendment (to Article 9, Section 17) authorized an increase in the amount of bonds which might be issued by the state in order to facilitate the building of a highway bridge across the Penobscot River from either the town of Prospect or the town of Stockton Springs to either the town of Bucksport or the town of Verona.[8] The same article and section of the constitution is further amended to provide for an increase in the amount of state bonds to be issued to finance the building of state highways and intrastate, interstate, and international bridges.[9]

Delaware. The general assembly has been authorized to empower municipal corporations, other than counties, to adopt zoning ordinances (thereby adding to Article 2, Section 25). These ordinances may regulate, in specified districts, buildings and structures and the nature and extent of their use.

Ohio. Article 12, Section 3, of the constitution has been repealed and Section 2 amended in large part. No property, taxed according to value, may be so taxed, for all state and local purposes, in excess of one and one-half per cent of its true value. But laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon are to be taxed by uniform rule according to value. All bonds outstanding on the first day of January, 1913, whether of the state of Ohio or of any city, village, hamlet, county, or township in the state, or which have been issued in behalf of public schools of Ohio and the means of instruction in connection therewith, and all bonds issued for the World War compensation fund, are to be exempt from taxation; and, without limiting the general power, subject to the provisions of Article 1 of the constitution, to determine the subjects and methods of taxation or exemptions

[7] Yes, 62,108; No. 32,622.
[8] Yes, 58,107; No, 43,919.
[9] Yes, 58,666; No, 43,252.

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therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose. But all such laws are to be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.[10]

Wisconsin. Article 4, Section 21, of the constitution, authorizing legislative salaries of $500 and travel allowance of ten cents per mile, has been repealed.[11] Denial of the right of sheriffs to succeed themselves for two years next succeeding the termination of their offices (Article 6, Section 4) is modified by an amendment providing that sheriffs shall not serve more than two terms, or parts thereof, in succession.[12] These amendments were passed by two successive legislatures and separately submitted to popular approval in April, 1929.

W. LEON GODSHALL.

Union College.

Direct Primary Legislation in 1928-29.[1] The primary election legislation of the past two years includes two enactments of outstanding importance: the repeal of the famous Richards law in South Dakota and the return to the convention method of making state-wide nominations in Indiana.

The Richards law was unique in its emphasis upon policies, its frank recognition of factions within the party, and its attempt to impose legal responsibility upon these groups, just as the earlier direct primary laws attempted to impose it upon the party itself.[2] The repeal of so

[10] Yes, 710,538; No, 510,874.

[11] Yes, 237,250; No, 212,846.

[12] Yes, 259,881; No, 210,964.

[1] Legislation governing registration, absent voting, and corrupt practices is not included in this summary unless it relates exclusively to primary elections. Every legislature except that of Alabama was in regular session in either or both of the years 1928 and 1929. Kentucky, Louisiana, Mississippi, and Virginia held sessions in 1928 only; Arizona, Arkansas, California, Illinois, Iowa, Kansas, Massachusetts, Nevada, New Jersey, New York, Rhode Island, South Carolina, and Wisconsin held regular or special sessions in both 1928 and 1929; while in the remaining thirty states the legislatures were in session in 1929 only. The session laws of Washington were not available at the time this note was prepared and the legislation of that state is not included.

[2] For an excellent analysis of this law, see C. A. Berdahl, "The Richards Pri-

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novel and far-reaching a piece of nominating machinery will be regretted by all who are interested in experimental politics.[3] They may, however, gain some comfort from the fact that the new Slocum law has several interesting features. It provides a "short ballot," the only state-wide nominations made by direct vote being those for United States senator, representative in Congress, and governor.[4] Nominations to all other state-wide offices, including lieutenant-governor, attorney-general, secretary of state, auditor, treasurer, and superintendent of public instruction, are made by state convention.[5]. If no candidate for nomination for senator, representative in Congress, or governor receives 35 per cent of the votes cast for the office, the state convention is empowered to select the nominee from among the candidates in the primary.[6] This provision, exactly like that in the present Iowa law, may result in all state-wide nominations being made by the convention. Nominations for members of the state legislature and county offices are made by direct primary, but the candidate receiving the highest vote is always the nominee.[7]

In the composition of the state convention the Slocum law has borrowed from the Richards law. Each county is entitled to three delegates, but in voting in the convention each delegate casts one-third of the votes cast in his county at the last general election for governor.[8] No proxies are allowed, and delegates present are entitled to cast the full vote of their county. In adopting the platform, each plank must be voted upon separately.[9] Delegates to the convention receive an allowance of five cents per mile.[10]

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mary," in this *Review*, vol. 14 (Feb., 1920), p. 93; *ibid.*, "The Operation of the Richards Primary," in *Annals of Amer. Acad.*, vol. 106 (March, 1923), p. 158.

[3] The Republican state platform of 1928 was opposed to the Richards law, and its repeal was urged by Governor Bulow (Democrat) in 1929. Efforts to invoke the referendum on the repeal were unsuccessful. The writer is indebted to Professor C. A. Berdahl for this information. For a discussion of the repeal of the Richards law and of the nature of the new Slocum law, see his article, "New South Dakota Primary Law Applies Short Ballot Doctrine," *Nat. Munic. Rev.*, vol. 19 (May, 1930), p. 235.

[4] *Laws of South Dakota*, 1929, ch. 118, sec. 2, p. 125.

[5] *Ibid.*, sec. 55, p. 140.

[6] *Ibid.*, sec. 39, p. 137.

[7] *Ibid.*, secs. 2, p. 125 and 39, p. 137.

[8] *Ibid.*, sec. 55, p. 140.

[9] *Idem.*

[10] *Idem.*

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The date of the South Dakota primary is now the first Tuesday in May.[11] Names are placed upon the ballot as the result of a petition signed by from two to five per cent of the qualified voters, accompanied by a declaration on the part of the candidate,[12] and are arranged by lot.[13] In case a candidate for a nomination has no opposition, he automatically becomes the nominee of the party.[14] The primary is tightly closed. There is provision for a party enrollment which stands until changed by the voter, and the voter is entitled only to the ballot of the party with which he is registered.[15] In addition, he may be challenged and required to swear "that he is in good faith a member of the party and a believer in its principles as declared in the last preceding national and state platforms."[16]

The presidential primary provided for in the Slocum law should operate most effectively. Voting is for delegates only, and all delegates are elected at large. The law, however, has adopted the California plan of requiring delegates to be grouped under the name of their choice for president, with the stipulation that they be voted for as a group.[17] Petitions to place the names of delegates upon the ballot must include an indorsement by the presidential candidate for whom they have expressed a preference, or by some one acting under authority from him,[18] but provision is made for a "no preference" column.[19] It is evident that the new law is admirably designed to secure the harmony between the preferences of the delegates and the popular preference for president which is so essential if the voters are to exert any real control over their delegates in the national convention.[20]

There is nothing in the new Indiana law to commend it to direct primary enthusiasts. For years the direct primary of that state has been a point of attack by those who favor a return to the convention system,

[11] *Ibid.*, sec. 20, p. 131. Before 1927, the primary was held in March; in that year the date was changed to the fourth Tuesday in May.

[12] *Ibid.*, secs. 4 and 5, pp. 125-6.

[13] *Ibid.*, sec. 8, p. 127.

[14] *Idem.*

[15] *Ibid.*, sec. 18, p. 131.

[16] *Ibid.*, sec. 30, p. 134.

[17] *Ibid.*, secs. 6 and 9, pp. 126-9.

[18] *Idem.*

[19] *Idem.*

[20] See Overacker, *The Presidential Primary*, chs. 6, 7, and 12, for a fuller discussion of this question.

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and the new law is generally conceded to be a victory for them. The Indiana League of Women Voters rose to the defense of the direct primary, but with the passage of its registration law the major issue of the session, and without the aid of ex-Senator Beveridge, it was unable to muster sufficient strength to save the law from emasculation.[21]

It must be admitted that the old Indiana law was too much of a hybrid to be a real direct primary measure. Only congressmen, members of the state legislature, local officers, and delegates to state conventions were nominated *directly*. In addition, there was a preference vote for president, governor, and United States senator which became binding if any candidate received a majority. The state convention retained the power to choose delegates to the national convention and to nominate to all other elective state offices. In case no candidate for president, senator, or governor secured a majority of the preference vote, nominations to these offices also were made by the state convention.[22] The 1929 amendments eliminate the preference vote, giving the state convention complete control of all state-wide nominations and retaining the direct primary for representatives in Congress, members of the state legislature, and local offices only.[23] Thus Indiana, like New York and Idaho, has removed the most interesting and conspicuous offices from the direct control of the voter and has left him in possession of a field where, in view of the multiplicity of offices, no nominating system can be expected to operate effectively.[24] If there is to be a division of offices between the direct primary and the convention, the basis of division in the South Dakota law would seem to be a much more desirable one.

The effect of these Indiana amendments is to eliminate the presidential primary. There is no longer a preference vote for president, and from now on the state convention will not only select the delegates

[21] The writer is indebted to the officers of the Indiana League of Women Voters for this information. The League succeeded in getting its registration law through both houses of the legislature, only to have the governor pocket veto it. The death of ex-Senator Beveridge was a great loss to direct primary supporters in Indiana.

[22] For a summary of the law, see Merriam and Overacker, *Primary Elections*, pp. 370-1.

[23] *Laws of Indiana*, 1929, ch. 68, p. 223.

[24] Idaho repealed its direct primary for state-wide and congressional offices in 1919, and in 1921 New York repealed the direct primary so far as state-wide offices were concerned.

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to the national convention but instruct them or not as it may choose.[25]

Ohio has codified and revised its entire election law without making any radical changes in the salient features of its nominating system.[26] Maryland has created a joint legislative commission of nine to examine all laws relating to elections and to recommend "such eliminations from, additions to, and modification of the existing laws as said commission may deem desirable."[27] The report is to be submitted in January, 1931. In Pennsylvania, the election law commission created in 1927 has been authorized to continue its work until 1931. It was organized to "codify, amend, and revise the election and primary election laws."[28] Whether any sweeping changes will follow the recommendations of these committees remains to be seen.

In addition to the comprehensive changes cited above, there has been the usual amount of tinkering with the details of the nominating process. A few amendments relate to the presidential primary. In 1928, Massachusetts provided for a presidential preference vote, applicable to that year only.[29] It will be remembered that after the Republican presidential primary of 1912, in which the state at large endorsed Taft in the preference vote and elected delegates who were for Roosevelt, the Massachusetts legislature eliminated the preference vote. Since that time voting has been confined to delegates at large and district delegates whose names may be grouped under the name of their preferences for president.[30] As the 1928 primaries approached, there was some grumbling among Republicans because no preference vote was possible. In March, Governor Fuller sent a special message to the legislature suggesting that provision be made for such a vote, and the bill was speedily passed.[31] It required the voter to insert the name of his preference for president in a blank provided for that purpose. The preference vote was of no great significance, and there has been no attempt to make it a permanent part of the law.

Ohio has shifted the date of its presidential primary from the last Tuesday in April to the second Tuesday in May, and has provided

[25] *Laws of Indiana,* 1929, ch. 68, p. 223.
[26] *Legislative Acts of the State of Ohio,* 1929, p. 307.
[27] *Laws of the State of Maryland,* 1929, p. 1425.
[28] *Laws of the Commonwealth of Pennsylvania,* 1929, no. 530, p. 1672.
[29] *Acts and Resolves of Massachusetts,* 1928, ch. 158, p. 183.
[30] *Acts and Resolves of Massachusetts,* 1913, ch. 835.
[31] *Boston Herald,* March 24, 1928, p. 1.

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that the state and presidential primaries be held jointly in presidential years.[32] The separate ballot for the preference vote has been eliminated, and henceforth names of candidates for presidential preference, delegate to the national convention, and state offices will all appear on one ballot.[33]

A candidate for presidential or vice-presidential preference in Oregon who files a personal declaration instead of a petition must, in the future, accompany his declaration with a statement signed by the chairman and secretary of the state committee of his party indicating that his candidacy "is advocated generally throughout the United States."[34] This measure was designed to keep the names of local notoriety-seekers off the ballot.

Although Indiana is the only state which has removed any statewide nominations from the operation of the direct primary, several states have altered the applicability of the primary to local offices. Illinois has removed park commissionerships and some city and township offices from the scope of the direct primary.[35] On the other hand, the direct primary was applied to nominations in particular cities, towns, or counties in Georgia, North Carolina, South Carolina, and Massachusetts;[36] and Rhode Island extended her caucus law to the town of Cumberland.[37]

South Carolina is using the primary to ascertain popular preferences for certain appointive positions in a way reminiscent of the "postmaster primary" provided for in the original Richards law in South Dakota. Henceforth the game warden of Anderson county is to be nominated at the primary, and it is made the duty of the legislative delegation from the county to recommend to the governor the person so nominated.[38] The road commissioner of Horry county is

[32] *Legislative Acts of Ohio*, 1929, p. 337, sec. 4785:67.

[33] *Ibid.*, pp. 341-43, secs. 4785:75-77.

[34] *General Laws of Oregon*, 1929, ch. 143, p. 121.

[35] *Laws of Illinois*, 1929, H.B. no. 24, 290, and 775, pp. 412-13.

[36] *Acts and Resolutions of Georgia*, 1929, no. 174, p. 576 (Clinch county); *Public Laws and Resolutions of North Carolina*, 1929, ch. 70, p. 55; ch. 77, p. 60; ch. 319, p. 375 (McDowell and Ashe counties); *Acts and Joint Resolutions of South Carolina*, 1929, No. 145, p. 154 (in commission-government cities of 35,000 to 45,000 population); *Acts and Resolves of Massachusetts*, 1928, ch. 242, p. 248 (Fall River primaries of 1929).

[37] *Acts and Resolves of Rhode Island*, 1928, ch. 1232, p. 249.

[38] *Acts and Joint Resolutions of South Carolina*, 1928, no. 625, p. 1195.

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to be voted upon in the same way, and the person receiving the highest number of votes is "eligible for recommendation and appointment."[39]

A return to the convention method of nominating the mayor and all elective New York City borough and county officials was prevented by Governor Roosevelt's veto in 1929.[40] The bill was passed by a Republican legislature with the avowed purpose of enabling the party organization in New York City to select a mayoralty candidate who could defeat Tammany in the final election. In vetoing the measure, Governor Roosevelt said that he saw no reason for singling out New York City in this fashion, and that it would be a serious violation of the direct primary principle, to which the Democratic party in that state was committed.[41]

Few changes have been made in the date of the primary. Ohio has shifted her state primary from August to May in presidential years in order to have it coincide with the presidential primary;[42] Michigan has changed from the Tuesday following the first Monday in September to the Tuesday following the second Monday in the same month;[43] and Wisconsin has changed from the first to the third Tuesday in September.[44]

Qualifications for participation in the primary continue to give legislators and courts no little difficulty. The Ohio law remains closed, with provision for challenge; but in the future one's right to participate will be determined by the largest number of candidates of any party voted for at the last general election (instead of by one's vote "at the last general election"), in even-numbered years.[45] Idaho no longer will permit the party authority to determine the party test, but has provided for party enrollment at the time of registration and for an oath that one has been affiliated with the given party for two years past and intends in good faith to support its candidate in the next election.[46] Florida now requires the payment of a poll tax for

[39] *Ibid.*, No. 931, p. 1920.
[40] *New York Times*, April 20, 1929, p. 1.
[41] *Idem.*
[42] *Legislative Acts of Ohio*, 1929, p. 337, sec. 4785:67.
[43] *Public Acts of Michigan*, 1929, No. 306, p. 791.
[44] *Laws of Wisconsin*, 1929, ch. 112.
[45] *Legislative Acts of Ohio*, 1929, p. 346, sec. 4785:82.
[46] *General Laws of the State of Idaho*, 1929, ch. 260, p. 530.

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participation in primaries as well as in the general election.[47] Unimportant changes in party enrollment features have been made by Massachusetts[48] and New York.[49]

The efforts of certain southern states to bar negroes and Democratic "bolters" from the primaries promise to cause the courts no little difficulty. It will be remembered that after the United States Supreme Court declared the Texas "white primary" law of 1923 unconstitutional[50] the legislature of that state amended the law so as to give the party state executive committee power to prescribe qualifications for participation in the primary.[51] The Democratic state executive committee promptly barred negroes, and this ban has been upheld by several United States district courts.[52] If these cases are taken to the Supreme Court, that body may find it necessary to reopen the question, "Is the primary an election?," to which it gave an indecisive answer in the Newberry case[53] and no answer at all in the Herndon case.[54] The Democratic state committees of both Texas and Alabama are taking steps to bar from the 1930 primaries those who bolted the Smith ticket in the presidential election of 1928. What litigation or legislation will result from this effort remains to be seen.

Legislation affecting the filing of petitions to place names on the primary ballot has been voluminous, but few significant changes have been made. Michigan has added a new provision requiring petitions for United States senator, governor, and lieutenant-governor to be signed by at least 100 residents in each of at least twenty counties of the state,[55] and Massachusetts has slightly altered her provisions for geographical distribution of the signers of petitions.[56] Less important amendments affecting the dates when petitions are to be filed were adopted by Florida, Illinois, Mississippi, and Oregon.[57]

[47] *General Acts, etc., of Florida,* 1929, ch. 13761, p. 491.

[48] *Acts and Resolves of Massachusetts,* 1928, ch. 89, p. 57.

[49] *Laws of New York,* 1928, ch. 779, p. 1650; ch. 815, p. 1731.

[50] Nixon v. Herndon, 273 U. S. 536.

[51] See this *Review,* vol. 22 (May, 1928), p. 356.

[52] *New York Times,* July 25, 1928.

[53] Newberry v. United States, 256 U. S. 232.

[54] The act was held to be a violation of the Fourteenth Amendment, and the effect of the Fifteenth amendment was not considered. See R. E. Cushman, "Constitutional Law in 1926-27," in this *Review,* vol. 22 (Feb., 1928), p. 70.

[55] *Public Acts of Michigan,* 1929, no. 306, p. 791.

[56] *Acts and Resolves of Massachusetts,* 1929, ch. 135, p. 116.

[57] *General Acts, etc., of Florida,* 1929, ch. 13761, p. 483; *Laws of Illinois,* 1929,

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Another state—Wyoming—has joined the ranks of those which require names of candidates at primary elections to be rotated upon the ballot,[58] and Montana has extended her requirement to cases where there are only two candidates for the given office.[59] Iowa and New Jersey have made minor changes in the details of provisions regulating the rotation of names on the ballot.[60] Illinois has deprived the secretary of state of the power to certify the names to be printed upon the primary ballot, and has created a "primary certifying board," composed of the governor, the secretary of state, and the auditor of public accounts, to perform this function.[61]

"Run-off," or second, primaries have been provided for in two more southern states—Florida and Oklahoma[62]—making a total of eight states with such provisions.[63] Both of these states had unsatisfactory experiences with preferential voting, the Oklahoma law of 1925 having been declared unconstitutional by the state courts.[64] Wisconsin, which formerly permitted the name of a person to appear on the final election ballot as a *party* candidate only if, in the primary, all the candidates for that nomination received in the aggregate five per cent of the vote for governor in the last general election, now stipulates that the aggregate vote shall be five per cent of the *average* vote for governor at the last two general elections.[65] An amendment to the Montana law affecting persons nominated for office on more than one party ticket provides that if a person fails to receive the nomination of the party for which he filed a declaration of candidacy, his name may not be printed under any party designation, but may be listed among the "independent" candidates.[66]

p. 414; *Laws of Mississippi*, 1928, ch. 128, p. 172; *General Laws of Oregon*, 1929, ch. 104, p. 71, and ch. 105, p. 71.

[58] *Session Laws of Wyoming*, 1929, ch. 23, p. 28. Formerly, names were arranged alphabetically.

[59] *Laws, etc., of the State of Montana*, 1929, ch. 67, p. 110.

[60] *Acts and Joint Resolutions of Iowa*, 1929, ch. 40, p. 72; *Acts of New Jersey*, 1928, ch. 103, p. 212.

[61] *Laws of Illinois*, 1st special session of 1928, pp. 48, 60.

[62] *General Acts, etc., of Florida*, 1929, ch. 13761, p. 488; *Session Laws of Oklahoma*, special session of 1929, ch. 241, p. 303.

[63] See Merriam and Overacker, *Primary Elections*, pp. 82-83.

[64] Dove v. Ogleby, 244 Pacific 798 (1926). For a discussion of the case, see Robert E. Cushman, "Public Law in the State Courts in 1926," in this *Review*, vol. 20 (Aug., 1926), p. 588.

[65] *Laws of Wisconsin*, 1929, ch. 381.

[66] *Laws, etc., of the State of Montana*, 1929, ch. 67, p. 110.

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Several states have modified the composition of party conventions or committees. Henceforth, the party state convention in California will be composed of one delegate for each of the following elective officers: governor, lieutenant-governor, treasurer, controller, attorney-general, secretary of state, all members of the board of equalization, all senators and representatives in Congress from California, and all members of the state legislature. Delegates are of three kinds: "hold-over," or elected officials nominated as candidates of the party whose terms extend beyond January following the primary; "nominee," or candidates of the party nominated at that primary; and "appointive," or persons appointed to represent officials for whom there is neither a "hold-over" or "nominee" delegate.[67] The basis of representation thus becomes offices rather than geographical districts or party votes. Illinois has slightly modified the basis of representation in judicial nominating conventions; and California, Illinois, and Michigan have made minor changes in convention dates.[68]

The increasing volume of legislation affecting party committees is evidence of an appreciation of the importance of these bodies even under a system of direct nominations. North Dakota has provided for the election of a national committeewoman as well as committeeman at the primary in presidential years,[69] and Michigan has finally accorded women equal representation upon her state committees.[70] California has reconstructed her state central committee to include all members of the state convention, plus three delegates appointed by each member of that body.[71] The state committee, therefore, becomes a very large body; but it may act through an executive committee. The powers of the state committee in New York have been increased materially. It now has power to make all its own rules as to the number of members, units of representation, and certain other matters formerly determined by the state convention. There are two limitations upon this power: each unit of representation must have an equal number of members; and if women are accorded equal representation, the primary ballots must carry such

[67] *Statutes of California*, 1929, ch. 834, p. 1767.

[68] *Laws of Illinois*, 1929, p. 405; *Statutes of California*, 1929, ch. 834, p. 1767; *Laws of Illinois*, 1929, p. 406; and *Public Acts of Michigan*, 1929, no. 306, p. 792.

[69] *Laws of North Dakota*, 1929, ch. 123, p. 149.

[70] *Public Acts of Michigan*, 1929, no. 306, p. 792.

[71] *Statutes of California*, 1929, ch. 834, p. 1767.

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party positions separately by sexes.[72] The local party organization in Chicago has been materially changed by an amendment substituting the ward for the precinct as the unit of representation in cities of 200,000 population and providing for the election of ward committeemen at the primary.[73] Massachusetts has subjected ward, as well as city and town, committees to comprehensive regulations.[74] Powers and dates of meetings of party committees, and the filling of vacancies thereon, are affected by less important amendments in Florida, Illinois, Massachusetts, Montana, New Jersey, North Dakota, Oregon, and Wyoming.[75]

A number of states have modified their provisions relating to the amounts which may be spent in primary contests and the filing of expense accounts, but these amendments are neither novel nor significant.[76] A long list of changes, too numerous to enumerate, concern the details of printing, distributing, counting, and certifying the ballots in primary elections.

From the legislative harvest of the past two years, it is apparent that the field of primary elections is one in which experimentation still flourishes.

LOUISE OVERACKER.

Wellesley College.

Governors' Messages, 1930. The general theory underlying our system of state government in the United States demands that there be lodged in the representatives of the people assembled in legislatures the responsibility for determining the broad policies to be followed

[72] *Laws of New York,* 1929, ch. 542, p. 1115.

[73] *Laws of the State of Illinois,* first special session, 1928, p. 40.

[74] *Acts and Resolves of Massachusetts,* 1928, ch. 212, p. 220.

[75] *General Acts, etc., of Florida,* 1929, ch. 13761, p. 481; *Laws of Illinois,* 1921, p. 420; *Acts and Resolves of Massachusetts,* ch. 188, p. 206; *Laws, etc., of the State of Montana,* 1929, ch. 98, p. 337; *Acts of New Jersey,* 1928, ch. 99, p. 207; *Laws of North Dakota,* 1929, ch. 125, p.151; *General Laws of Oregon* 1929, ch. 397, p. 535; *Session Laws of Wyoming,* 1929, ch. 115, p. 198.

[76] *Acts, etc., of Arizona,* 1929, ch. 13, p. 32 (limitations); *Statutes of California,* 1929, ch. 103, p. 188 (filing of expense accounts); *General Acts, etc., of Florida,* 1929, ch. 13761, p. 490 (regulations governing campaign expenditures applicable to new "run-off" primary); *Acts of General Assembly of Kentucky,* 1928, ch. 160, p. 539 (increasing amounts which candidates for nomination in cities of first class may spend); *Public Acts of Michigan,* 1929, No. 306, p. 816 (changing basis upon which amounts to be expended in primary elections are to be figured); and *Acts of the State of Virginia,* 1928, ch. 119, p. 530 (changing filing date).

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by the administration. But due to the infrequent sessions of these representatives, and their lack of intimate knowledge of the day to day problems of the conduct of the state's business, it is inevitable that the governor should assume leadership in the formulation of these policies. His success is determined largely by his strength as a leader of the majority party in the legislature and by the force of his personality.

The governor's message is an institution. It is the medium through which the chief executive makes known to the legislature and to the public the policies which he favors. In the case of a new governor, the message is frequently a mere reiteration of the platform upon which he was elected. An experienced governor, or one who is a close student of public affairs, usually draws heavily upon his knowledge of abuses which need correction through legislation.

The message is quite often designed more for public consumption than for the guidance of the legislature. It is prepared carefully, well in advance of the legislative session, usually in conference with party leaders, and is transmitted to the newspapers for release on the day of its delivery. Much that is contained in it is worded carefully to stimulate public reaction without committing the chief executive. If he and the leaders of his party find that his suggestions are well received by the press and the public, action by the legislature may follow. If strong protests arise, the suggestions are quietly withdrawn in a personal conference between the governor and the legislative leaders. For this reason, the fact that the record of legislative accomplishment frequently does not correspond with the governor's message should not necessarily be taken to indicate a lack of harmony between the governor and the legislature.

Since governor's messages are always addressed to legislatures, they are written only when these bodies meet in regular or special session. Most of the state legislatures meet biennially in the odd-numbered years. Hence 1930 produced messages only in five states having annual sessions, i.e., New York, Massachusetts, New Jersey, Rhode Island, and South Carolina, and in the states of Virginia, Mississippi, and Kentucky, where the legislature meets biennially in the even-numbered years. Special sessions were reported in Utah, Kansas, and New Hampshire.

The abstracts of governors' messages which follow indicate in broad outline the principal problems of government in these states which

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seem to the governors important enough to demand legislative action. No attempt has been made to deal exhaustively with the many minor matters mentioned in the messages. It is assumed that persons interested in the details as they affect any particular state or problem will consult the messages themselves.

Kansas. Governor Clyde M. Reed summoned an extraordinary session of the legislature on February 29 "to deal with an emergency confronting the state in the matter of taxation." Due to a decision of the state supreme court interpreting the intangible tax laws, under a uniform clause in the state constitution, certain discriminations had arisen. The governor recommended in his 1929 message that these laws be repealed, but the recommendation was not followed at that time. The decision of the supreme court, filed on February 8, was to the effect that no moneyed capital in the state could lawfully be taxed at more than the minimum rate on intangibles of fifty cents on a one hundred dollar valuation, due to the provisions of the federal law on the taxation of national bank shares (Revised Statutes 5219). Under this decision, the aggregate annual loss in taxing revenues would exceed $1,500,000. The special session was called for the purpose of repealing the three state laws taxing intangibles and submitting a constitutional amendment to permit the classification of property for taxation.

In his message to the extraordinary session, Governor Reed called attention to a number of other matters which might be taken up as the legislature saw fit, as follows: 1. Amendment of the inheritance tax law to take full advantage of the credit feature of the federal estates law. 2. Clarification of the insurance tax laws. 3. Increased taxation on motor vehicles used in commercial transportation. 4. Increase of fees charged by various state and county offices, so as to bear a direct relation to the cost of maintaining the offices. In this connection the governor said: "There is no reason why public utility companies and others utilizing the authority and machinery of the Public Service Commission should not pay reasonable fees for services actually rendered." 5. Establishment of a county assessment unit. 6. Requirement of a uniform system of accounting and compulsory audits for municipalities, including a compulsory budget procedure. 7. Creation of a bipartisan commission composed partly of members of the legislature and partly of citizens "to study and analyze state government and to report to the governor by December 1, 1930, its recommenda-

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tions as to improvement in efficiency or decrease in expenditures through changes, consolidations, or discontinuances of any of the existing administrative and executive agencies."

Kentucky. Governor Flem D. Sampson placed before the Kentucky General Assembly on January 14 a program in which he suggested a need for new revenues to permit expanded state activities, and raised the issue of curbing chain stores. He requested the immediate appointment of a legislative committee to devise and recommend legislation to restrain chain stores, looking to action at the present session. He forecasted a budget of two million dollars in excess of anticipated revenues, in addition to a need for three million dollars for modernization of penal and charitable institutions. He also expressed hope that means might be found to retire the state's floating debt of ten million dollars. While new revenues obviously would be necessary to accomplish these ends, recommendations as to the specific sources to be tapped were not forthcoming.

Proposals for the general improvement of state government included an overhauling of the state's basic law by a constitutional convention, legislative reapportionment, and the construction of a new state office building on the capitol grounds.

Needed reforms in the penal and correctional system, according to Governor Sampson, include the development of a comprehensive probation and parole system in each county. He believes that all sentences should be indeterminate, and that release should be conditioned on progress in the vocational and educational facilities which he suggests should be established in the penal institutions. A state prison farm to relieve congestion and to supply foodstuffs for the institutions is recommended.

The governor's public school program included: (1) increased appropriations for public education; (2) free textbooks; (3) equal pay for county and city teachers of equal training; (4) an educational equalization fund for the benefit of the poorer counties; (5) nine months of school both in the cities and in the country; (6) standardization of elementary school plants and equipment; and (7) a strong truancy law based upon educational achievement rather than upon age. The establishment of a medical college at one of the state's educational institutions is also proposed.

Other recommendations included an appropriation of one million

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dollars to complete the purchase of Mammoth Cave, development of state lands for flood control, forests and bird and game sanctuaries, the development of Cumberland Falls as a state park, and the granting of larger authority to the state railroad commission so that freight rates may be equalized with those of surrounding states.

Massachusetts. In his message to the General Court on January 1, Governor Frank G. Allen pointed with pride to a record of constructive accomplishments. Chief among these were the great expansion of the institutional building program, substantial reduction of tax rate and bonded debt, and a substantial balance in the state treasury.

His recommendations to the Court included a number of suggestions for intensive study of troublesome problems. Among the studies which he would like to have made are: (1) the problem of aged sufferers from chronic disease, and (2) the training of retarded but only slightly defective individuals in special classes in the public schools. A number of similar special investigating committees have been at work, and the governor recommends that careful consideration be given to their reports. Such reports are being made on child hygiene and welfare, on the extension of educational requirements for minors leaving school to enter employment, on reduced service and compensation for aged judges, on taxation, and on metropolitan transit. In connection with this latter problem, it is interesting to note that a referendum of car-riders in the metropolitan district is being taken to ascertain their preference with respect to the future management and control of the transit system.

Recommendations for new construction at the welfare institutions and state hospitals and the development of research and prevention in mental hygiene were stressed.

It appears that the compulsory automobile insurance law has caused considerable congestion of property damage cases in the trial courts. To correct this situation, the governor recommended that a board of referees be created in the department of insurance to hear and determine cases arising under the compulsory motor vehicle insurance law. Appeals from the decision of this board to the courts would be allowed.

The governor pointed out that rates for electric current in Massachusetts furnished by private companies are considerably higher than those where the current is furnished by municipally owned plants. He suggested that this competition between municipal and private ownership is desirable. In view of numerous attempts made by private

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utility companies to purchase municipal properties at exorbitant figures in order to eliminate competition, the governor recommends that the approval of the department of public utilities be required before such purchases be completed.

Other recommendations included: (1) denial of the privilege of driving a motor vehicle to any person twice convicted of a felony; (2) construction of a suitable building to house the supreme court and state library; (3) enactment of a uniform law on extradition; (4) amendment of the statutes on jury service to permit women to serve on juries; and (5) regulation of tourist camps.

Mississippi. In his biennial message, Governor Theodore G. Bilbo called attention to the fact that there is a deficit of four and one-half million dollars in state's funds, inherited from the previous administration. In the face of this deficit, he recommended the issuance of from sixty to eighty-eight million dollars for highways, a million for the completion of a new institution for the feeble-minded, a half-million for construction at the state university, and other funds for additional prison capacity and for the extension of state aid to rural education. The recommendation of the issuance of highway bonds was, however, conditioned upon the creation of a new highway commission to be composed of three members appointed by the governor. At the 1928 session, the legislature voted an increase in the public school appropriation under the impression that this would be adequate to give the white school children of the state an eight months' school term, but it was found that the amount was inadequate without rural coöperation, which was not forthcoming. In order to finance all of these additional recommendations, the governor suggested the imposition of a gross sales tax.

The diffusion of responsibility in the domain of higher education in Mississippi stimulated Governor Bilbo to recommend the creation of a central educational board composed of eight laymen, with the governor serving ex-officio, one of the lay members to be appointed from each congressional district for an eight-year term. For all institutions which are supported primarily by the state, local boards of five members were to be appointed by the governor, with advisory powers, for a four-year term. The heads of the institutions were to be named by the central board and the employees by the local board. In order that the central education board might be enabled to carry on its administrative work, a director of higher education, coördinate

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with the state superintendent of public instruction, was to be appointed by the board to exercise supervision over all institutions of college rank. Conflicts of jurisdiction were to be resolved by a special education commission composed of the state superintendent of public instruction, the director of higher education, and the president of the state educational association.

The governor likewise recommended the creation of a state board of charities consisting of the governor, the president of the state medical association, the executive secretary of the state board of health, and four members appointed by the governor for four-year overlapping terms. This board would supervise the distribution of state aid to hospitals which handle charity cases.

Governor Bilbo also recommended a county unit school and road system. All bonds issued by school and road districts smaller than a county would be refunded at the lower rates at which the counties can sell their bonds. He suggested the creation of a central purchasing agency for the state, to take the place of the present departmental buying.

It appears that there is no sinking fund in Mississippi for the retirement of the public debt. The creation of such a fund, as well as a fund for the insurance of state property, was recommended, unless the legislature is willing to authorize insurance with commercial companies. The governor likewise recommended the establishment of an oil inspection department, the expenses to be paid out of the gasoline tax. He would have this department, rather than the state auditor, collect the gasoline tax, thus permitting the auditor to audit the collections.

New Hampshire. Governor Charles W. Tobey convened the New Hampshire legislature in special session on February 18 to consider the subject of taxation. Certain bills which were before the legislature at its 1929 meeting had been submitted to the supreme court with a request for an opinion as to their constitutionality. Following the report by the court and a redraft of the legislation by a recess tax commission, the legislature was convened to consider the redrafted bills. No clue as to the exact nature of this tax program is given by the governor in his message.

New York. The voters of New York ran true to form in electing a Democratic governor and a Republican legislature. This fact is reflected in the tone of Governor Franklin D. Roosevelt's message of January 1. Particular stress is laid upon the need for forgetting

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political affiliations and for coöperation in working out four major projects: (1) reform of the administration of justice; (2) permissive reorganization of town and county government; (3) legislation relating to social welfare, including the prison and hospital program; and (4) providing cheaper electricity for homes.

Governor Roosevelt summarized needed reforms in local government as: (1) limitation of the debt-incurring powers of counties and towns; (2) a rearrangement of the number and duties of town officers; (3) new forms of county government; (4) the right to consolidate various town and county operations; and (5) the right of two or more counties to unite in the exercise of certain functions without loss of county individuality. His program on judicial reform called for the creation of a commission composed of laymen and lawyers to study the problem. The 1929 legislature passed a bill creating a commission composed entirely of lawyers, which was vetoed by the governor.

He suggested a revision of the banking laws, strengthening of the public service commission, and provision for old age pensions, all of which suggestions had been studied by citizen committees during 1929. The creation of a state crime investigation bureau and extension of the work of the state police, including an increase in pay, were also suggested. The governor's plan for reduction in the cost of electricity involved development of the state-owned water power on the St. Lawrence River. This project, he believed, would aid greatly in the relief of agriculture through the electrification of farms. He also suggested a four-year term for governor, the abolishment of the constitutional provision for a state census, the creation of bi-partisan boards of election in all counties, the limitation of campaign expenditures, and the publication of campaign receipts.

The financial condition of the state was reported to be excellent. The large surplus remaining in the treasury was to be used for the development of the state's welfare institutions. An additional bond issue for further institutional development was recommended, and it was suggested that the legislature submit to the voters a constitutional amendment to permit the issuance of bonds for future institutional construction without a vote of the people. The governor's program of labor legislation included: (1) extension of the list of compensable occupational diseases; (2) establishment of a real eight-hour day and forty-eight hour week for women in industry; (3) establishment of an advisory minimum wage board for women and children; (4) raising

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the limit for workmen's compensation; (5) state regulation of fee-charging employment agencies; (6) prohibition of the granting of temporary injunctions without notice and hearing in labor disputes; and (7) improved housing legislation.

Subsequent to the convening of the General Assembly, Governor Roosevelt sent special messages on the state building program, prisons, banking, and the construction of a bridge over the St. Lawrence River. The message on prisons recommended the immediate construction of temporary housing facilities outside the prison walls and the prompt development of a training school for prison guards.

Another special message called attention to the building program at the state hospitals. Present plans call for the completion of facilities to house 6,000 additional patients this year and authorization of facilities for an additional 6,000 in 1931 and similarly in 1932, in order to provide 18,000 additional patient beds for occupancy by 1935.

New Jersey. Governor Morgan F. Larson called to the attention of the legislature a number of reports which had been prepared by interim committees and other groups, and recommended a careful consideration of the legislation suggested by them. The topics covered by these commissions included a revision of the election laws, the distribution of foodstuffs in the metropolitan area, an educational survey, state control of aviation, and a plan for the administration of intermunicipal and interstate projects.

He pointed out that no new highway routes should be added to the state system until the present road-building plans were completed. Grade-crossing elimination would, he thought, be stimulated by permitting the apportionment of the cost between the railroads and the public, rather than by having the whole cost borne by the railroad companies as at present. He recommended legislation to permit public control of sight areas at rural highway intersections.

A stronger regulation of building and loan associations and a strengthening of the blue sky laws were recommended. He called particular attention to the need for the revision of civil service laws and for the creation of a bill-drafting bureau. He strenuously objected to the granting of broadcasting licenses by the Federal Radio Commission to stations located in New Jersey without the knowledge of state authorities. He recommended that legislation be enacted to require a certificate of convenience and necessity for radio broadcasting stations and suggested that the legislature memorialize Congress to amend the

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federal radio act to require the Federal Radio Commission to give notice to the attorney-general of every state in which a license is about to be granted and afford an opportunity for the state to advance arguments for or against the granting of the request.

A general law replacing numerous special laws on pensions for public employees was suggested. The governor declared himself opposed to an income tax, which he thought should be reserved "for war, pestilence, or other such emergencies." A recent decision of the United States Supreme Court declaring that state taxes upon the gross receipts of public utilities cannot include receipts for interstate business will cause a considerable loss to the municipalities of New Jersey, and the governor recommended legislation to replace this revenue from some other source.

Utah. Governor George H. Dern convened the legislature in special session on January 27 to consider the recommendations of the Tax Revision Commission and the Legislative Tax Committee. These two bodies, which had been working since early in 1929, had found that any comprehensive and scientific program of tax revision would require several constitutional amendments. It was for the purpose of formulating these amendments and submitting them to the people that the legislature was convened.

The amendments suggested included (1) repeal of the uniformity rule and adoption of the principle of classification, and (2) centralization of tax administration in a state tax commission. While the general principles of the whole tax revision program were submitted to the legislature, only the constitutional amendments were to be acted upon. The governor approved the committee's recommendations except their suggestion for state control over tax levies for strictly local purposes (the Indiana plan), and suggested that it was unwise to attempt to write into the constitution a requirement that the entire proceeds of the proposed new income tax should be paid into the common school fund. He pointed out that unless new sources of revenue for general state purposes were provided, the general revenue fund of the state would soon be seriously embarrassed by inability to meet ordinary demands.

South Carolina. In his message to the General Assembly on January 14, Governor John G. Richards reported an accumulated deficit of five million dollars. The government of the state is being conducted on a credit basis. The interest charges for borrowings in

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anticipation of revenues during the past year were $368,989.73. Suggested remedies included (1) the passage of a law requiring daily deposit of all funds, (2) requiring colleges to pay all fee receipts into the state treasury, and (3) authority to the finance committee to borrow from any fund for general purposes and to fix the rate of interest on such borrowings. This would, in effect, pool all financial resources and reduce interest charges. A new system of accounting for state and local governments, with a biennial audit, was recommended. The taxes on real estate should be reduced and new sources of revenue tapped. The constitution should be amended to permit a classified property tax.

According to the governor, the worst curse of South Carolina is bad roads. These, he believed, should be improved as rapidly as possible, using bond money, retiring the bonds from special highway revenues. The next worst problem is the obsession of the one-crop idea. The results of recent investigations proving the suitability of South Carolina soils and climate for diversified gardening are reported. The governor recommended a five-year tax exemption to new farmers.

Governor Richards' educational program was headed by a recommendation for compulsory reading of the Bible in all schools and colleges. He also suggested free textbooks for the indigent and the distribution of the educational equalization fund on the basis of school attendance rather than enrollment.

The abolition of annual legislative sessions and the adoption of biennial sessions was strongly urged. Other governmental reforms included the consolidation of several departments and the abolition of others. The governor also suggested that a legislative commission be created to study the labor laws. The adoption of a workmen's compensation act was recommended. The creation of a state police system in the highway department, the adoption of a comprehensive traffic act, and strict enforcement of the liquor laws concluded the message.

Rhode Island. Governor Norman S. Case reported to the General Assembly that there was a cash balance of four million dollars in the state treasury, due to unexpected receipts from inheritance taxes. He recommended that this be appropriated for non-recurring purposes, since so large an income from this source in future was not to be anticipated. Part of the surplus should, he believed, be devoted to construction of new buildings at penal and welfare institutions. Concrete suggestions included the construction of a reformatory apart from the state prison and the building of additional facilities at the hospital for

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the insane to accommodate criminal insane now housed at the penitentiary. He also recommended the segregation and treatment of drug addicts. The construction program should be undertaken at once, he suggested, in order to relieve unemployment, preference being given to Rhode Island labor.

The improvement of traffic facilities by the construction of by-pass routes around congested areas was stressed, as was also the need for highway beautification. The activities of the state police should be extended to water patrol, in order to enforce commercial fishing laws.

Judges of the superior court are now elected by the legislature, sitting in joint convention. Governor Case recommended that they be made appointive by the governor, with confirmation by the Senate. He requested that careful consideration be given to the recommendation of the judicial council that rule-making powers be conferred upon the courts. He believed that the law providing for the working out of fines favored wealthy offenders and should be amended or repealed.

Other subjects mentioned in the message included encouragement of town forests, state-wide inspection of dairies, study of forest taxation, protection of the shell-fish industry, establishment of uniform caucus laws, and the development of harbor facilities in Narragansett Bay.

Virginia. The year 1930 marked the close of the term of Harry Flood Byrd as governor of Virginia. Under the constitution of the state, the governor may not be a candidate to succeed himself. The successor is John Garland Pollard, formerly professor of political science in the College of William and Mary.

Governor Byrd delivered his valedictory to the regular session of the General Assembly on January 8. As is customary in such messages, he summarized the accomplishments of his administration. Chief among these were, in his estimation: the reorganization of the governmental machinery, the revision of the constitution, the adoption of a new accounting system, tax reform, reduction of the public debt, the abolition of poorhouses, suppression of the fee system of compensating public officers, and promotion of rural electrification.

Persons interested in methods of constitutional revision in the states will take note of Governor Byrd's views on the constitutional convention. The constitutional changes made during his administration were suggested by a special commission appointed by the governor under authority from the Assembly. The amendments were acted upon in two successive sessions of the Assembly and approved by popular vote.

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This method was suggested by Governor Byrd, first, because in Virginia a constitutional convention can promulgate its own acts without a popular vote; second, because the most recent constitutional convention cost $500,000 as compared with $5,000 for the late special commission; and third, because more outstanding citizens could be induced to serve on such a commission than in a constitutional convention.

Governor Pollard, in his inaugural message, announced his intention to carry on the policies of his predecessor. A substantial increase in funds for educational equalization and the appointment of five business men and two educators to the new state board of education comprised his recommendations in the field of education. The favorable financial condition of the state treasury, he believed, justified a reduction in the income tax. A reasonable increase in workmen's compensation awards was favored.

A comprehensive revision of the election laws was a principal plank in the new governor's program. He believed that the process of voting should be simplified. The expenditure of money in campaigns should be regulated; the wholesale payment of poll taxes in order to qualify voters should be discontinued by both parties; and the primary system should be made compulsory rather than optional.

The creation of a commission to study county government was asked. This body would have two functions: first, to draft a general law offering optional forms of county government, and second, to conduct a continuous comparative study of government in the county area. The governor requested also that the department of public welfare study and report to the General Assembly upon the problem of mothers' aid, making recommendations as to machinery and funds needed to make the system effective. The desired report should also indicate the distribution of costs between the state and the local subdivisions.

HARVEY WALKER.

Ohio State University.

Progress in State Forestry Legislation, 1929. State forestry legislation in 1929 was concerned principally with the amending of existing laws rather than with the enactment of new ones. Unfortunately, Arkansas, a large timbered state, was again unsuccessful in an attempt to pass a law for the establishment of a state forestry department. No changes were made in existing Florida forestry laws, but the ap-

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propriation was increased by $48,500 over the preceding year, which action shows the marked advancement of forestry in that state. West Virginia changed the name of its organization to the state department of game, fish, and forestry, and broadened the scope of state forestry activity; it also provided for the appointment of a chief forester to head the forestry division.

Nebraska consolidated the administration of forestation, state parks, and game and fish into one board. This change did not, however, materially affect the status of the forestry work of the state. South Carolina authorized the establishment of forest-tree nurseries and directed the sinking fund commission to transfer to the state commission of forestry certain waste lands to be used for state nurseries or other forestry purposes. New Hampshire made a change in its laws as to the examination and registration of arborists, setting up a board composed of the state forester, the commissioner of agriculture, and the entomologist of the agricultural experiment station, whereas formerly examinations were under the control of the state forester only. Failure to comply with the law now carries a maximum fine of one hundred dollars instead of fifty dollars.

An enabling act to permit the acquisition of land for national forests was passed by Missouri, but a limit of 2,000 acres in any one county was placed on it. Mississippi removed the 25,000 acre limitation to the enabling act, leaving the question of the amount of land to be acquired entirely to the federal government and the state forestry commission. In North Carolina the enabling act was amended so as to permit acquisition throughout the entire state rather than in the western part of the state only.

Considerable legislation looking to enlarged public ownership and administration was enacted. Indiana provided for the acquisition of lands to be held as permanent public forests, and Rhode Island made similar provision for town forests. California provided a means for the setting aside of tax delinquent cutover lands for management as state forest areas.

Many states authorized the acceptance of gifts or purchases of lands to be used as state forests. Massachusetts provided for the purchase of a tract of land in the towns of Ashby and Townsend to be known as the Willard Brook state forest, in order to perpetuate a scenic piece of property and to preserve the forest growth thereon. The New Jersey board of conservation and development accepted as

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a forest park reservation the estate of ex-Governor Voorhees. Ohio provided for the acceptance of a gift of land for state forest purposes, and an endowment of over a million dollars for maintenance and purchasing additional lands. Texas provided for acceptance of gift land for the purpose of state forests and the demonstration of the practical utility of timber culture. Donations of property for forest purposes may be accepted by the South Carolina commission of forestry, and real estate may be acquired for these purposes. Vermont passed similar legislation, to the effect that lands may be accepted or purchased in the name of the state to be administered as state forest parks. West Virginia may purchase lands suitable for state forests and forest parks. Montana authorized the state board of land commissioners to accept grants of lands given to the state and to set aside the same as state parks for public camping and recreational purposes; the state forester of Montana is designated by law as state park director. Minnesota provided for the acceptance of gifts and for the purchase in certain cases of small tracts of land for the use of the state in forestry and fire prevention work.

New York adopted a somewhat new method of stimulating and assisting the counties in the establishment of county forests by appropriating as much as five thousand dollars a year to any county, if the county provides at least an equal amount for the purchase and development of county forests. The same state amended its conservation laws by providing for the purchase and development of state forests in the area outside the "preserve counties;" heretofore, state forest development was limited by law to the preserve counties.

Much of the state forest-fire legislation was revised. To cite only some of the important cases: Idaho strengthened its fire law by conferring authority on the state forester to prevent by court injunction the cutting operations of a timber operator who has failed to dispose of accumulated slash in accordance with law, and provides for a maximum fine of $1,000 for burning in the closed season without a written permit any slash, débris, etc., and for any violation of the terms of the permit to burn. California authorized the state board of forestry, upon written petition of the owners of fifty per cent or more of the forest land in any particular region or zone, to designate such region or zone a hazardous fire area within the state, and made it unlawful to build fires in such areas, except in camp sites established thereon. Also in California municipalities may contract with the county to

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exercise fire protection functions within municipalities and to reimburse the county for such service. Washington requires that all spark-emitting engines be equipped with modern spark arresters, in good condition, and non-compliance is deemed a misdemeanor. Minnesota broadened the slash disposal law by including any accumulation of timber débris or inflammable refuse from the manufacture of lumber or other timber products. In Pennsylvania, the department of justice, acting for the department of forests and waters, may institute suit on behalf of the commonwealth to recover the expenses incurred on account of persons causing forest fires. Pennsylvania also authorized the chief forest fire-warden to declare a public nuisance any property which, by reason of its condition or operation, is a special forest fire hazard, and as such endangers other property or human life. The owner must abate such public nuisance or pay for abatement and costs, plus a fine of not exceeding one hundred dollars.

Idaho passed a law wherein it was declared to be a misdemeanor, and punishable accordingly, to throw any lighted cigarette, cigar, match, ashes, or flaming substance from any vehicle, or to throw any such article upon any place where it may directly or indirectly cause a fire resulting in damage to forage lands of the United States or the state of Idaho, or to the property of any person.

Connecticut was successful in passing a bill the essence of which is that a forest owner may have his land classified by the state forester and thereafter his standing timber will be exempt from taxation up to the time the timber becomes of a merchantable age. North Carolina's legislature initiated a constitutional amendment permitting the taxing of property by a rule that is uniform as to each class of property. A similar constitutional amendment was passed in Washington; but in this case it is less broad, because no authority is given the legislators to classify real estate other than the separation of forest and mineral lands. Maine simplified her existing tax law in administrative details and as to the qualification of property that might be admitted under it, and also readjusted the rate of taxation.

While Idaho's old tax law remains in full force and effect, the current law offers a new method of approach in forestry taxation work. It provides for a valuation for the purpose of taxation on forest-producing lands listed with the state coöperative board of forestry of one dollar per acre and a yield tax on the timber cut thereon of twelve and one-half per cent of its stumpage value throughout a period of

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fifty years. The right of extending the period is given through a renewal of the contract to continue the production of timber on the listed area. Minnesota changed the tax law by dispensing with a fixed annual specific tax. The principal features of the Oregon reforestation law include an annual fee of five cents per acre during the period of maturing the timber crop and a yield tax of twelve and one-half per cent based upon the value of the crop when harvested. In addition to the annual fees and the yield tax, the owner is required to provide fire protection to the growing crop. All lands subject to classification come under the provisions of the law.

A. B. HASTINGS.

U. S. Department of Agriculture.

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PUBLIC ADMINISTRATION

EDITED BY LEONARD D. WHITE
University of Chicago

Developments in Public Administration, 1929. American public administration continues to be the subject of an unparalleled degree of attention. In an address before the Governmental Research Conference in November, 1929, surveying administrative progress, Dr. Luther Gulick declared: "As a nation, we have adopted in conspicuous degree the habit of research. This is a milestone in our progress." Our intense preoccupation with our administrative institutions is undoubtedly in part a reflection of their imperfection, but in part also a typical American conviction that there are no discoverable limits, as yet, to the opportunity for perfection.

On a national scale, the present tendency is signalized by the appointment by President Hoover of the National Commission on Law Observance and Enforcement, on the basis of whose first reports the President recommended, among other things, the transfer of the prohibition unit from the Treasury Department to the Department of Justice, modification of federal court structure to relieve congestion, and consolidation of frontier services. The President has also called a White House Conference on Child Health and Protection, which is to meet in 1930, and for which much preparatory investigation was carried on in 1929. More recently, the President appointed a Commission on Social Trends, and directed it to present an analysis of social movements broadly parallel to the study of recent economic trends. Several units of this study will be devoted to aspects of public administration.

An enlarged program of research in public administration was inaugurated at the University of California under the direction of Professor Samuel C. May, with the assistance of a grant from the Rockefeller Foundation. It is intended to develop the present extensive collection of material, to organize research, and to extend the scope of graduate instruction and training in public administration. Seven special research projects are announced: (1) a study of the interrelations of the communities comprising the San Francisco region;

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(2) the administrative relationships between federal, state, and local governments; (3) personnel problems; (4) legislative drafting; (5) the administration of criminal justice in California; (6-7) the annual publication of critical annotated guides to the literature of state and federal administration.

In the survey of public administration for 1928,[1] reference was made to the appointment by the Social Science Research Council of an advisory committee on public administration. The committee has authorized a critical survey of the status of research in this field, which is being conducted by Professor John M. Gaus, of the University of Wisconsin. The committee has also laid the basis for a coöperative plan for collecting material of interest to researchers in administration. It is proposed, briefly, to establish a small number of regional centers, presumably usually in university libraries, each of which will collect intensively for its area, and also a large number of local centers, each responsible for the available material for a given community. This plan is in process of development. The publication by the University of California of the proposed critical guides to federal and state material, and the enlarged services of the *United States Daily,* will be of great value in the effective prosecution of the plan.

Police Administration. The subject of crime and police continues to hold public attention, focusing unfortunately in part on such dramatic episodes as the St. Valentine's day massacre in Chicago. Substantial progress toward improved police administration may be recorded, however, coupled with notoriously ineffective policing in some cities.

The development of uniform crime records and a system of national crime statistics continues to rank as the chief contribution of recent years. During 1929, the International Association of Chiefs of Police unanimously approved the report of its committee on uniform crime records (*Uniform Crime Reporting,* Macmillan, 1929). The committee has prompted the introduction of a bill in Congress to provide for the collection of statistics by the bureau of investigation in the Department of Justice; at the time of writing, the bill has been approved by the House. Meanwhile, on January 1, 1930, the committee inaugurated the collection of statistics, with over 350 cities,

[1] See this *Review,* May, 1929, p. 427.

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comprising a registration area of over 20,000,000 persons, reporting the first month.

A nation-wide conference of police executives was held at the University of Chicago November 16 and 17 for the purpose of discussing the proposed system of crime records. This unique meeting, hailed by the press as the strangest conference ever held, "where the professor and policeman sat down together," was highly successful. A regional conference is proposed for 1930.

The use of radio in police work is developing rapidly. Twenty-one municipal police departments and one state police organization have filed application for permission to construct and operate wireless stations. Experience in Detroit fully demonstrates the value of patrol cars equipped with receiving sets. A technical memorandum on radio applied to police work was prepared at the University of Chicago and circulated among the larger departments.

Police training schools are also multiplying in number and effectiveness. The New York State program was referred to in the last annual survey; New York City has since established a Police Academy, representing the most ambitious movement for police training yet launched in the United States. Other significant experiments in police training have been undertaken by Willamette University Law School, the University of Southern California, Junior College, Riverside, California, and the University of Wichita. A police school for special instruction in the use of pistol, rifle, tear gas, smoke bomb, and specialized weapons has been established at Camp Perry, Ohio, in connection with the National Matches. Reference may be made to the research program initiated at the University of Chicago by August Vollmer, the first units of which include the scientific testing of the so-called "lie detector," a regional survey of police, and the preparation of monographs on selected phases of police administration.

At Northwestern University, a bureau of criminal identification has been established, with Colonel Calvin Goddard at its head. In connection with it a new police journal has been inaugurated, entitled *The American Journal of Police Science.*

The United States Bureau of Standards is giving attention to the identification of typewriting and the identification of bullets, as initial steps in a comprehensive program to determine the efficiency of methods of crime investigation.

The investigation of the Chicago police department referred to in

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the 1928 survey of public administration has continued throughout 1929, with the cordial support of Commissioner William F. Russell. Following upon the completion of the survey, four interim reports have been presented and adopted, dealing with the wagon service, the record system, a system of recall signals, and a complete reorganization of the department. Other matters are being dealt with in a systematic rejuvenation of the department.

Standards of Measurement. Reference has already been made to the recently proposed system of crime reporting, from which it ought to be possible, in due course of time, to develop workable standards of measuring the efficiency of police departments.

Progress has been made in securing a minimum degree of comparability in the statistics of welfare institutions through another year's work of the joint committee representing the Association of Community Chests and Councils and the Local Community Research Committee of the University of Chicago. The objects arrived at have not yet been attained, however. It is hoped that this project will be taken over by the federal government on July 1, 1930.

The National Committee on Municipal Standards, Dr. Clarence E. Ridley, secretary, presented a tentative draft of units of measurement for street cleaning and for refuse removal and disposal, in September, 1929. This report was accepted by the International Association of Street Sanitation Officials and is now being tested under operating conditions. The National Committee on Municipal Standards, in coöperation with the Local Community Research Committee of the University of Chicago, is now developing standards in other fields, as well as watching the application of the police and street-cleaning standards. The rating of civil service commissions has not reached the point of reporting.

Training for the Public Service. The University of Southern California held its second short course for public officials in the summer of 1929. In the previous spring, classes in various phases of public administration were opened by the University of Southern California in the Los Angeles City Hall. One hundred and sixty-five city and county employees enrolled, including some thirty police officers taking a course in criminal law. In the fall of 1929, an increased offering resulted in a registration of 265. This work is now one of the permanent projects of the University, which bids fair to become one of the important centers of training for American public officials. We still

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lack, however, such a body as the English Institute of Public Administration.

Under the direction of William P. Capes, executive secretary of the New York State Conference of Mayors, a training school for city and county employees was established on January 1, 1930. Financial administration will be the first topic considered.

Reorganization. The Ohio legislature declined to adopt the report of the Joint Committee on Economy in the Public Service, but substantial progress has been made by executive order of Governor Cooper along some of the lines indicated. For the first time in Ohio, an allotment system has been set up by the department of finance to control expenditures; a new accounting system changing accounts from a cash to an accrual basis has been installed; and a complete new classification of the state civil service has been prepared. The finance department is working on the biennial budget a full year before its submission to the General Assembly. In People of the State of New York v. Tremain, the Court of Appeals handed down an important decision strengthening the position of the governor with respect to the budget. (See note by Professor F. G. Crawford, page 403.)

A survey and audit of the state government of New Jersey was completed during 1929 by the National Institute of Public Administration. At the time of writing the passage of reorganization bills seemed unlikely. Serious irregularities were disclosed by the survey, and the question of reorganization has become a political issue. State surveys are expected also in Maine and Arkansas.

The movement in Wisconsin noted in these pages a year ago eventuated in action in the 1929 session of the legislature. An advisory council was established (ch. 468) consisting of the governor, director of the budget, director of purchases, director of personnel, the state chief engineer, and such other officers as the governor may designate, to assist the governor in matters referred by him especially with respect to finance and personnel. Within the executive department is created a bureau of purchases, a bureau of engineering (ch. 468), a bureau of personnel (ch. 465), and a budget bureau (ch. 97). This legislation marks a distinct step away from the traditional Wisconsin type of organization toward the Illinois type.

The administrative commission is still found in Wisconsin, however. The reorganized department of agriculture and markets (ch. 479)

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consists of three commissioners, each appointed for a term of six years, one member retiring biennially; the reorganized highway commission (ch. 81) follows the same pattern; likewise the state annuity and investment board (ch. 307).

Texas created the new office of state auditor and efficiency expert (ch. 91, 41st legislature, 1st called session), the incumbent of which acts as an "investigator of all public funds and disbursing officers," with authority to report on duplication of work and efficiency of employees. Grave irregularities have been uncovered as a result of the first investigations.

No systematic steps have yet been taken to deal with the problem of federal reorganization.

The Council-Manager Movement. During 1929, twenty-eight cities were added to the list of council-manager cities, nine of which had adopted the plan previous to 1929. Two cities abandoned the plan, and judicial decisions voided state legislation authorizing this form of municipal government in Kentucky and Indianapolis. Two large cities—Cleveland, Ohio, and Portland, Maine—voted to retain their charters. During the year, fifty-three managers resigned or were removed by the council and one died, representing a turnover of 13.4 per cent.

The removal of City Manager William R. Hopkins of Cleveland and the selection of Daniel E. Morgan as his successor aroused much interest. General confidence in the ability and integrity of Hopkins was coupled with the conviction that he was playing a more conspicuous rôle in municipal affairs than is appropriate for a city manager. The new manager has taken a position in harmony with established practice in this respect.

Substantial grants have been made to the International City Managers Association by the Julius Rosenwald Fund and the Spelman Fund for the development of a research program, and for making possible brief leaves of absence to city managers for the purpose of undertaking field study of some phase of municipal management.

Personnel Administration. A review of recent personnel legislation by Mr. Fred Telford will be found in this journal, volume 24, pp. 104-109. During 1929, extensive classification and compensation studies were made in New Jersey; Massachusetts (Report of the Special Commission on County Salaries, Senate Document 270, 1930); Ohio; St. Louis county, Minnesota; and Duluth, Minnesota. The preliminary

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report of the wage and personnel survey made by the field survey division of the United States Personnel Classification Board was published, H.D. 602, 70th Congress, 2d session. This report contains sections on the German civil service by F. F. Blachly and Miriam E. Oatman, and on the English civil service by Morris B. Lambie. The Buffalo Civil Service Commission has published its classification.

A grant has been made by the Spelman Foundation to the Bureau of Public Personnel Administration for the study of service ratings. Mr. J. B. Probst, chief examiner of the St. Paul civil service commission, has developed a rating form (the J.B Rating Form) which is giving unusually satisfactory results.

General. Reference should be made to the report of the Donovan Commission on the Amendment of the Public Service Law of New York, prepared by a research staff under the direction of Professor W. E. Mosher, of Syracuse University.

The New York Commission on Old Age Security presented a unanimous report, recommending for the needy aged special classification, assistance (normally in the home) in the form of money payments, or the grant of food, clothing, or rent, and a system of administration resting upon the city and county welfare districts created by the new public welfare law which went into effect January 1, 1930. This report was based on an extensive investigation by the National Institute of Public Administration.

LEONARD D. WHITE.

University of Chicago.

The Executive Budget Decision in New York. Twenty years of discussion of budget procedure came to a conclusion with the decision of the Court of Appeals on November 19, 1929, in People of the State of New York v. Tremaine. This decision upheld the contention of Governor Franklin D. Roosevelt as to the powers of the executive in budget procedure, as provided for by Article 3a of the state constitution.

The first chapter in the movement to improve financial procedure in the state was the passage in 1910 of a law which initiated a system requiring all requests for appropriations to be filed and tabulated for the use of the legislature and the governor in advance of the legislative session. Prior to this time, no attempt had been made to collect or compile the requests before the opening of the legislative session. This

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law of 1910 provided that on or before November 15 of each year each spending agency should file with the comptroller a detailed statement of all requests for appropriations to be made at the next session of the legislature. The requests were to be tabulated by the comptroller and then transmitted to the governor by December 15, and to the legislature on the opening day of the session.

The next change in budget procedure occurred in 1913, when Governor Sulzer appointed a committee of inquiry to investigate the management of state departments and institutions with a view to securing greater economy and efficiency in public service. This committee recommended the creation of a board of estimate, consisting of state officers, whose duty it would be to prepare the appropriation bills; also the establishment of a commission of efficiency and economy charged with examining all expenditures of the state and making recommendations along the lines of efficiency and economy. The two recommendations resulted in legislation, and a department of efficiency and economy was created under a commission appointed for a term of five years. In addition to powers of investigation, all spending agencies were required to file with the commissioner detailed statements of desired appropriations for the ensuing fiscal year. A state board of estimate was created, composed of the governor, the lieutenant-governor, the president of the Senate, the speaker of the Assembly, the chairman of the ways and means committee, the comptroller, the attorney-general, and the commissioner of efficiency and economy. All requests for appropriations were to be filed with this board as well. Power was granted to examine all requests and to hold public hearings, and the board was to prepare estimates for a budget, with explanations. A statement of the amount necessary to meet the debt service was to be included, as well as an estimate of the state's revenue, with a statement of all unexpended balances.

This whole system was a failure because of the antagonism between members of the board, and as a result both laws were repealed in 1915. When the constitutional convention met in that year, three bills were introduced which together provided for an executive budget system. The constitution was defeated, and the next year a legislative budget system was passed. Under this law the governor submitted a statement of the appropriations desired by the departments, and was empowered to prepare a statement of the probable revenues of the state. By March 15 each year, the Senate finance committee and the Assembly

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ways and means committee submitted a budget containing a complete and detailed statement of appropriations, together with a single appropriation bill.

This system was used until 1921, when, by Chapter 336, these budget provisions were amended and the Board of Estimate and Control was created. This agency was composed of the governor, the comptroller, the chairman of the Senate finance committee, and the chairman of the Assembly ways and means committee. The work of the board was in charge of a research director, who became the head of the budget bureau when the administrative agencies of the state were reorganized in 1926.

In its report of February 18, 1926, the Hughes Commission recommended an executive budget; and this was adopted by the legislature. Statutory provisions granted to the executive, through the division of the budget, power to study, investigate, and survey the operations of the various departments in the interest of economy. Formerly, this had been exercised by the Board of Estimate and Control. Departmental estimates were to be submitted by October 15, and the representatives of the Senate finance committee and the Assembly ways and means committee were to be invited to attend the revision of the estimates. The budget formulated by the governor, together with an appropriation bill, were to be submitted to the legislature. A constitutional amendment embodying these provisions was also recommended, was passed by the legislature, and was submitted to the voters in November, 1927. Governor Smith made a strenuous campaign for its adoption, and the vote in its favor was overwhelming.

The first test of the executive budget took place in the 1929 legislature. The amendment provided that the governor "shall submit to the legislature a budget containing a complete plan of proposed expenditures and estimated revenues. It shall contain all the estimates so revised or certified and clearly itemized and shall be accompanied by a bill or bills proposing appropriations and reappropriations." This appropriation bill was given a number, and in the Legislative Index, under the heading "introducer," it appears as "governor's budget."

When Governor Roosevelt submitted his budget in January, 1929, he included many lump sum appropriations not itemized—for example, the following:

"The department of law."

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"Personal service."

"To permit the attorney-general to reorganize the department of law, exclusive of the appropriations made for the investigation of sale of securities and unlawful corporative securities—$582,350.

"On or before June 15, 1929, the attorney-general shall file with the governor a tentative segregation of the amount hereby appropriated to be made available on July 1, 1929. Before any liabilities shall be incurred, such segregation shall have the approval of the governor. . . . ."

The state finance law (Chapter 336, Section 139, *Laws of 1921;* Chapter 364, *Laws of 1927*) provided that such segregation should not take place without the approval of the governor, the chairman of the finance committee of the Senate, and the chairman of the ways and means committee of the Assembly; and, of course, the provision for segregation by the governor alone came into direct conflict with this portion of the law. The legislature did not assent to the governor's proposal; and on February 27, 1929, when the governor's original budget bill was passed, all items providing for segregation by the governor alone were eliminated. In their place was inserted segregation clauses calling for the approval of the legislative chairmen as well as that of the governor. But Governor Roosevelt refused to approve any of these lump items where he was to share authority for segregation.

On March 18, the governor submitted a supplementary budget. This date was within the thirty-day limit. When this budget was received, considerable agitation resulted because of lack of precedent. Should the bill be accepted as coming from the governor? Should it be introduced by the chairman of the Assembly ways and means committee? After some deliberation, it was accepted as being introduced by the governor, and so appears in the Legislative Index. The bill was given a number and referred to the ways and means committee. This budget contained many lump sum items, all of which were restricted to the exercise of the governor's sole power of segregation. Ten days later, the legislature acted upon the bill and added the provision to the lump-sum items that these were to be segregated under Section 139 of the state finance law. In the cases of the lump-sum construction items, the legislature added a segregation clause known as Section 11, similar to Section 139, to apply whenever such monies were used for personal service. On April 12, the governor signed the lump-sum items which involved reorganization, but vetoed Section 11.

The controversy in the courts arose over an action brought by the

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attorney-general to restrain the comptroller from making payments without the approval of the legislative chairmen. The appellate division of the Supreme Court ruled against the governor, and the case was carried to the Court of Appeals. Before this court, ex-Governor Nathan Miller assisted the attorney-general, while William D. Guthrie and Edward O. Griffin, formerly counsel to the governor, appeared for the defendant.

On the claim that the legislature had the power to assign to its chairmen the function of approval of segregation, the court reviewed the doctrine of separation of powers. Section 7 of Article 3 of the constitution was cited, which states that "no member of the legislature shall receive any civil appointment within this state . . . . from the governor . . . . or from the legislature . . . . during the time for which he shall have been elected."

This prohibition in the constitution applied to the appointment of these two chairmen to this administrative position. If it did not, then the legislature might appoint all of its members to administrative positions. The court stated that the legislature was in trouble whether the function of segregation was legislative or administrative. If it was legislative, it was unconstitutional because legislative power cannot be delegated. If it was administrative, it was unconstitutional under Section 7, Article 3, of the state constitution. The court held Section 139 of Chapter 336 of the *Laws of 1921* and Section 11 of Chapter 593 of the *Laws of 1929* to be unconstitutional and void.

The court then took up the State Office Site and Buildings Commission, which was composed of administrative and legislative officers. In regard to this commission, the court held as follows: "The legislative members of the commission hold invalid appointments, and the commission is eviscerated and invalidated so far as its money-spending functions are concerned." The court then discussed the practice of having members of the legislature serve on commissions. There have been many illustrations of this practice, but the power was never challenged until the present conflict arose between the executive and the legislature.

A third question involved the constitutionality of the governor's veto of Section 11 of the State Office Sites and Building Commission appropriation, which provided for segregation by the legislative chairmen. Several clauses of the constitution apply. In the budget amendment of 1927, the legislature was granted authority to strike out or reduce items in the governor's budget, and to add items if they were stated

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separately and referred to a single object or purpose. The governor has no veto power over his budget, but may veto the separate items proposed by the legislature. The governor's counsel maintained that the addition of the clause for legislative segregation was unconstitutional, and the court upheld the contention that this was a rider to the appropriation bill and therefore improper. In Section 22 of Article 3, the constitution specifically prohibits riders to appropriation bills. The court maintained that if it was illegal for the legislature to add segregation provisions to a budget bill, it would follow that the governor should not insert such provisions in the bill. An alternative scheme would be for the legislature to strike out the item *in toto* and then submit it as a separate item.

Another question discussed by the court is significant as regards reorganization. The constitution provides that the legislature may create no departments or boards other than those specified, except for temporary purposes. The duties of the State Office Site and Building Commission were taken from the department of public works on the ground that it was a "temporary commission for a special purpose." The court held that the whole body of departmental duty is continuous, and that if the parts may be separated into temporary acts, all the powers of a constitutionally created department may be assigned to a special commission to be renewed from year to year and the basic purpose of the amendment defeated.

The decision concludes with a paragraph which grants to the heads of departments the power of segregation without the approval of the governor or the legislative chairmen.

This issue in New York has a political background. Since 1922, the governor has been of one party and the legislature of another. The use of the temporary commission was a device of a Republican legislature to control a Democratic governor. In the same way, Section 139 of the finance law of 1921 was invoked to secure legislative control of appropriations. The 1930 session may provide another chapter in this situation. If the legislature mutilates the executive budget by special acts, the governor can exercise his veto. Political exigency may, however, eliminate this, because the elections of 1930 are close at hand and the governors of New York have been particularly successful in statewide appeals.

FINLA G. CRAWFORD.

Syracuse University.

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Purchasing of Highway Equipment in Texas. Students of centralized purchasing give Texas the credit for being the pioneer state in the movement.[1] With the creation of the office of purchasing agent for the eleemosynary institutions in 1899, centralized purchasing in state government is said to have had its beginning. Purchasing organization in Texas remained unchanged until 1919, when, following an investigation into all departments by a legislative committee, a number of departments, including that of the state purchasing agent, were consolidated into a state board of control.

This board is composed of three members appointed by the governor with the consent of the Senate, for a term of six years, one member being appointed every two years. Each member receives $5,000 a year. A division of purchasing is one of six divisions under the board, others being (1) public printing, (2) auditing, (3) design, construction, and maintenance, (4) estimates and appropriations, and (5) eleemosynary institutions. The board is authorized to appoint a chief of the purchasing division, whose qualifications are prescribed by law.[2] But since its organization in 1920, no chief of the purchasing division has been appointed, a member of the board taking direct charge of this division. In addition to the board member, four other people are engaged in the work of this division, including an assistant purchasing agent. No increase in personnel has occurred since the organization of the board. Responsibility is vested in the board for purchasing all supplies used by the departments and institutions of the state, including furniture and fixtures, and all other things except strictly perishable goods, technical instruments, and books.[3]

When the state highway department was created in 1917, it was allowed to handle its own purchasing. But in 1921 a law was passed providing that the board of control should make contracts for equipment and supplies needed by the highway department.[4] In 1924 the legislature placed the duty of maintaining state highways upon the highway department, necessitating the purchase of several million

[1] Russell Forbes, "Purchasing for the Lone Star State," 10 *Texas Municipalities* 131-136 (1923); *ibid., Governmental Purchasing,* 36 (1929); A. E. Buck, "Coming of Centralized Purchasing in State Governments," supplement to 9 *National Municipal Review,* 117-135 (1920).

[2] *Revised Civil Statutes of Texas,* I, arts. 601-606, 631-632 (1925).

[3] *Revised Civil Statutes of Texas,* I, art. 634 (1925).

[4] *Laws,* Thirty-seventh Leg., reg. sess., ch. 50 (1921).

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dollars' worth of supplies and equipment each year for this work.[5] During the last four years, several controversies have arisen between the highway department and the board of control as to their respective powers in purchasing. An analysis of these controversies and their solution will indicate the limits of centralized purchasing in Texas.

The first difference of opinion arose in 1924, when the highway department issued a requisition for certain automobiles by manufacturer's name, including two closed cars. The board of control requested an opinion from the attorney-general as to whether it was obliged to purchase identical cars for which requisition was made. The board said that it did not consider the purchase of closed cars economical for the state. The attorney-general, after reviewing the statutes under which the two departments operated, concluded that it was within the competence of the highway department to decide what supplies, tools, and equipment were necessary in the maintenance of roads, but that its requisition must be confined to stating the general type, quality, and specifications within reasonable bounds, without stipulating any particular brand or make. After receiving the requisition, the board of control acts as a purchasing agent. It is for the highway department to say whether it wants closed or open cars, that being within its right to determine the type and general description of cars desired; but it cannot specify brand or make in its requisition.[6]

During the administration of Governor Miriam E. Ferguson (1925-27), relations between the two departments were not satisfactory. Members of the board of control testified before an investigating committee of the legislature in October, 1926, that the highway department had practically ignored their organization in making purchases. The provisions of the law relating to emergency purchases had been abused, and where approval of the board of control for certain requisitions was refused, such requisitions were withdrawn and a rent contract made by the highway department with certain bidders, with the understanding that the articles rented would belong to the state at the end of the period.[7]

Governor Moody appointed an entirely new highway commission when he came into office in 1927, and there have since been no attempts to ignore the board of control in purchasing. But the two de-

[5] *Laws*, Thirty-eighth Leg., reg. sess., ch. 75 (1923).
[6] *Biennial Report of the Attorney-General of Texas*, 1924-1926, pp. 154-159.
[7] *House Journal*, Fortieth Leg., reg. sess., p. 146 (1927).

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partments have not always agreed on the equipment to be bought. In the purchase of a large equipment order in 1927, the two agencies differed as to the brand of tractors to be bought, the highway department, at the insistence of the board of control, finally agreeing to accept a certain number of tractors of the make desired by the board of control.

The last controversy between the two departments occurred in the summer of 1928. In June, the highway department requested the board of control to advertise for bids on 328 items of equipment totaling over $420,000 in value. Bids were received on June 21, and on July 31 the highway department, by letter, submitted its recommendations for purchases to the board of control, stating brands and dealers' names. On August 27, the board of control transmitted to the highway department the recommendation of a majority of its members for purchase. The principal differences between the two recommendations were on tractors, graders, rollers, and trucks, sixty pieces of equipment in all. The highway department insisted that its recommendations be accepted, and the board of control stood on its judgment. The dispute between the two bodies continued for several months, was discussed in the press, and was brought to the attention of the governor and the legislature.

A statement of the arguments advanced by both sides will illuminate the main points of the controversy. The highway department insisted that its recommendations for equipment were based in every case on the lowest and best bid; its preference for a certain make of tractor, for instance, was based on the technical engineering knowledge and the unanimous recommendation of seventeen division engineers and thirty-four maintenance superintendents, as well as records of operating costs. In every case the department had recommended machinery which experience had demonstrated to be best adapted for its work. It had the responsibility for the construction and maintenance of state highways, and that should carry with it the right to determine the number, type, and quality of machines to be purchased. Delay in securing the equipment it desired was slowing up the work of road maintenance. No question of competitive bidding was involved, as no request for machinery by make had been made until bids had been received and tabulated. Highway machinery was technical equipment which, under the law, the department should be allowed to purchase without interference of the board of control. Finally, the department

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pointed out that its recommendation would not only insure the most satisfactory purchase but would be more economical by nearly $33,000 than that of the board of control, based on exactly the same number of units of equipment.

On the other hand, the majority of the board of control were equally insistent upon the logic of their position. They pointed out that the law was on their side; the attorney-general had ruled in 1924 that the highway department could not force them to purchase specified brands of machinery. Their recommendation for a particular make of tractor was based on the superiority of the equipment, demonstrated by test, and greater economy of operation. Acceptance of their recommendation as to tractors would prevent all of the tractor business from going to one firm, which gave no discount to the state and had a short guarantee. Approximately $25,000 of the difference in the cost of the items was due to the bids on one and one-half ton trucks. The original request of the highway department was for one and one-half to two ton trucks, and the advertisement had called for that type of equipment. The department later recommended the purchase of twenty-five one-ton trucks. To buy a one-ton truck, when the advertisement had been for a one and one-half ton truck, would be an injustice to bidders, which would probably result in an injunction.

Another difference of opinion arose over the letting of the contract for 1928-29 for gasoline and oil for the state departments and institutions. Over the objection of the highway department, the contract was let by the board to Company P. on the ground that theirs was the lowest and the best bid. The objection of the highway department was that the successful bidder did not have adequate facilities to serve the department, whereas another company, preferred by them, did. To give the contract to the latter company would save money.

As in 1924, the equipment controversy was referred to the attorney-general for decision. In his opinion on October 3, 1928, the legal adviser ruled that the opinion of his department in 1924 still prevailed. Regarding the respective rights and powers of the two departments in purchasing equipment, the attorney-general said: "It [the highway department] has the right to determine the number, the general type, and general quality of the machines or machinery that it needs for the purpose of meeting its responsibilities, but the law creating the board of control, ... has reposed in it the authority to do the purchasing after the specifications are furnished. And in the purchasing of par-

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ticular machinery, or other machinery, it is not bound by the recommendations or requests of the highway commission to purchase any particular name or brand of machine or machinery."[8]

In his opinion the attorney-general referred to a previous ruling of his department made on February 3, 1927, in regard to a controversy between the board of control and the regents of the University of Texas over the purchase of furniture and draperies for a girls' dormitory. Unable to agree upon the bidder to receive the contract, the board of regents withdrew its requisition, and the board of control asked for a ruling from the law officer. The latter held that an institution could withdraw its requisition for a particular kind or make of furniture or equipment, provided the board of control had not entered into any contractual relation with any bidder on the requisition. This had not happened in the present case. In upholding the absolute power of the board of control to make purchases for state institutions and departments, the attorney-general ruled that ".... the exclusive power to purchase furniture and equipment for the University of Texas is with the board of control; that such furniture and equipment must be as is especially adapted or designed for such institution and must be of the particular kind and make as requisitioned by such institution, and that the board of control has the discretionary power, to be reasonably exercised, to approve or disapprove of any particular kind and make of furniture and equipment, notwithstanding the requisition of the institution. After the requisition is made, and it, as to kind and make, has been approved by the board of control, the institution making the requisition has no further control over the matter, but it is within the exclusive province of the board of control to advertise for bids, pass upon the compliance with the advertisement by the bidders, and award the contract, without let or hindrance upon the part of the institution."[9]

In the absence of a court decision, these opinions of the attorney-general define the legal status of centralized purchasing in Texas. They leave no doubt that in the opinion of the legal officer the final power to purchase rests with the board of control. No department or institution can require it to purchase material or equipment which it does not wish to buy. On the other hand, the board seems unwilling

[8] *Opinion of Attorney-General of Texas,* October 3, 1928 (not printed).
[9] *Biennial Report of the Attorney-General of Texas,* 1926-1928, pp. 384-387.

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to force departments or institutions to pay for purchases which they do not approve. The highway commission stated emphatically that it would not issue shipping instructions or approve invoices for payment for machinery which it did not endorse. If the board should enter into a contract for the machinery, opportunity would be offered to test by mandamus the refusal of the highway department to pay for it. This has not been done. The items in dispute in 1928 were finally withdrawn by the highway department. The University regents withdrew their requisition, and an unofficial agreement was made that the University should be allowed to purchase the desired equipment, since it was to be paid for out of funds provided by the donor of the building.

While withdrawal of disputed requisitions has twice temporarily relieved embarrassing situations, no steps have been taken toward a permanent solution. The appointment of the secretary of the highway commission as a member of the board of control has improved the personal relations between that body and the highway department. On account of the prominence assumed by the dispute, many expected that the Forty-first Legislature, which convened in January, 1929, would make some change in the law. But the only action taken by the legislature was to investigate, by committee, certain charges made against the highway department and the board of control, in the course of which the purchasing controversy was examined. The committee took no interest in the differences of opinion between the two agencies as to purchases, and made no recommendations as to a change of law or procedure; and no action was taken by the legislature.[10]

In outlining these controversies over purchasing there is no intention to leave the impression that centralized purchasing in Texas is a failure. On the contrary, these disputes are the exception. In ninety-nine per cent of the cases, a member of the board of control states, the requisitioning department and the purchasing division are able to agree.

The same struggle to define the limits of central fiscal control has occurred in other states.[11] Forbes says: "Purchasing for construction and maintenance of highways has been another storm center. In ten states with central purchasing offices, the highway department maintains its own buying organization." But, in the opinion of Mr. Forbes,

[10] *House Journal*, Forty-first Leg., reg. sess., pp. 1487-89 (March 7, 1929).

[11] L. D. White, *Introduction to the Study of Public Administration*, 148-157 (1926).

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exemption of the highway department from centralized purchasing is unsound in principle. "Exemption from central purchase," he says, "should apply only to certain *classes* of commodities, and not to *all* the commodities needed by any state agency or class of agencies. The basis of exemption should be economy or the good of the agency concerned, and not political expediency."[12]

In a thoughtful discussion of the problem of the limits of integration, Professor White concludes that there are limits to the usefulness of fiscal supervision and control. "It goes too far in attempting to substitute its judgment on technical questions for the judgment of the department."[13]

Commenting editorially on the dispute between the highway department and the board of control, the *Dallas Morning News* said: "No doubt there is a good deal of human and natural stubbornness involved in the situation."[14] Among the necessary qualifications of the purchasing agent, says Mr. Forbes, is tact. "Tact is required, too, for the purchasing agent's relationship with the officials of the using departments. . . . . He should not try to force upon using departments his choice of quality, but rather should make every consistent effort, within the limits of established standards, to meet the demands and wishes of the users."[15]

There can be no doubt that, in securing harmonious and efficient administration, tact, prudence, moderation, and a respect for the powers and rights of other departments are equally, if not more, important than appeal to legal authorities. The evidence of the last few months indicates that such considerations are beginning to prevail in Texas.

FRANK M. STEWART.

University of Texas.

[12] Russell Forbes, *Governmental Purchasing*, 40-41 (1929).
[13] White, *op. cit.*, 161.
[14] September 22, 1928.
[15] Russell Forbes, *Governmental Purchasing*, 69.

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JUDICIAL ORGANIZATION AND PROCEDURE

EDITED BY WALTER F. DODD
Yale Law School

The Ohio Judicial Council Embarks on a Survey of Justice. In 1923 the first state judicial council in this country was established in Ohio. The Massachusetts act providing for such a council was introduced earlier and formed the basis for the Ohio law, but it was not adopted until 1924. The judicial council provided for by the Ohio law[1] was composed of the chief justice of the supreme court, two associate justices, the chief justice of the court of appeal, one common pleas judge, one municipal court judge, and three lawyers.

The council was charged with the duty of making a continuous study of the organization, rules, methods of procedure, and practice of the judicial system of Ohio, as well as the work accomplished and results produced by that system and its various parts. The results of this continuous study were to be reported biennially to the legislature, with such recommendations for the modification of existing conditions as the council might see fit to make. The council was authorized also to submit suggestions for the consideration of the judges of the several courts with regard to rules, practice, and procedure.

To accomplish its purposes, the council was authorized to hold public hearings, administer oaths, and require the attendance of witnesses and the production of books and documents. A witness giving false testimony, or failing to appear when duly summoned, was made subject to the same penalties to which a witness before a court is subject. The clerks of the various courts and other officials are required to submit to the council such reports as the council may prescribe.

The council went to work with enthusiasm. A large program of work was planned, but the initial appropriation of $1,000 proved inadequate and the work was compelled to lapse. In the meantime other states followed the Ohio plan,[2] with the difference that some of

[1] *Laws of Ohio* (1923), 364; *Gen. Code*, pp. 1926, 1697.

[2] Since 1923, substantially one-third of the states have adopted some form of judicial council. Though varying in powers, personnel, and immediate program of action, all are actuated by one common purpose—that of making an organized attempt to work out the judicial problems of the state through the

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them were more generous in providing funds with which to work.[3] For example, California established a judicial council in 1926, and that body has been extremely active. Equipped at the outset with an appropriation of $50,000, it inaugurated a survey of business in all the courts, and as a result entered upon a campaign to relieve overworked courts. In this matter it has apparently been quite successful. It has also made a study of readjustment of jurisdiction in the courts of review in the interest of greater efficiency.

In a short time the judicial council in California has learned much that should be known about the state's judicial problems, and it is taking steps to solve them. It must be noted, however, that the legislature has made this possible by substantial appropriations. In 1927 the sum of $170,000 was appropriated, $40,000 for the direct objects of the council and the remainder to pay extra compensation and travel expenses of assigned judges. A like sum was appropriated by the 1929 assembly, of which $27,000 is available to the council directly, and $143,000 is to be used for judges assigned to work outside of their counties. This carries the council to June 30, 1931.

But if the work of the Ohio judicial council was delayed at the beginning, the organization undertook a pretentious program when it once started, and there is now under way under its auspices a study in judicial administration which, if successfully carried out, may very well take its place alongside the important surveys which have been made in recent years in different parts of the country in the field of justice. Though conducted under the auspices of the judicial council, this study is being directed largely by the Institute of Law of the Johns Hopkins University, which has made the work possible by extending

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united efforts of bench and bar. Whether they have been composed wholly of judges or of both judges and lawyers, there has resulted a systematic attempt to study the work of our courts with a view to improvement. In two states, lay representation is found in the judicial council; and in a number the attorney-general or a member of the general assembly is added. At this time, councils are in existence in Ohio, Oregon, Massachusetts, Washington, North Carolina, California, Rhode Island, North Dakota, Connecticut, Kansas, Virginia, Kentucky, Michigan, Texas, Illinois, Pennsylvania, Iowa, Idaho, and Wisconsin.

[3] For a review of the judicial council movement, see J. A. C. Grant, "The Judicial Council Movement," in this *Review*, November, 1928. Cf. "The Judicial Council Movement Reviewed," 13 *Jour. Amer. Judic. Soc.* 38-44 (Aug., 1929); "Judicial Councils in Theory and Practice," 42 *Harv. Law Rev.* 817-820 (Apr., 1929).

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the help of its staff and financial resources. The survey is the first of several studies of state-wide scope which that institution will undertake in conjunction with state judicial councils.

Preliminary plans for the study were approved by the Ohio State Bar Association in the summer of 1929, and a representative committee of that association is assisting actively in the work. The attorney-general of the state and representatives of the leading law schools are also lending assistance. Indeed, before the survey is completed it is hoped to enlist the help of every agency in the state, research or otherwise, which has a substantial and continuing interest in the scientific study of legal and other social problems. The committee of direction[4] is taking stock of these agencies as one of its preliminary steps. Its purpose is not only to provide a bibliography of research completed and under way, but also to lay the basis for cooperation with the research personnel which will be interested in the various aspects of the work of the survey.[5] It is anticipated that this finding list will be completed during the spring.

Though plans for the survey are for the present largely tentative, they involve as a primary feature the formulation of a detailed scheme for the study of judicial administration in Ohio. To frame this detailed plan, a planning committee has been organized, composed of representatives of the key institutions and industries of the state. As the work proceeds, this group will be supplemented by various types of advisory committees. The planning committee will study the whole field in a preliminary way with a view to blocking out the specific detailed research tasks which should be undertaken and selecting the agencies and the personnel to perform these tasks.

A secondary feature of the work will be the formulation of an adequate system of judicial statistics. It is hoped that a system of records and statistics will be developed which will in future provide automatically much of the material which must at present be secured so laboriously. In working out this problem, careful attention will be given to

[4] The committee of direction is composed of Chief Justice Carrington T. Marshall of the supreme court, chairman of the judicial council; John A. Elden of the Cleveland bar; Leon C. Marshall and Hessel E. Yntema, professors of law at the Johns Hopkins University.

[5] For example, the Ohio Institute, a research organization with offices in Columbus, has received an appropriation of $25,000 from the Bureau of Social Hygiene for a study of crime. This work will undoubtedly dovetail to some extent with that of the Institute of Law.

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the experience of other jurisdictions, to the existing literature on the subject, and to the results of specific studies now under way.

That we are in a pre-statistical era, as far as judicial business is concerned, has been pointed out more than once. In its preliminary investigations in this field, the committee found itself in uncharted waters. "Aside from criminal statistics," said Dr. Marshall, "only the crudest and most elementary statistical tables are available as records of our state courts."[6] Though criminal tabulations have been made, they are for the most part rudimentary;[7] and when it comes to interpretation of statistical data, and especially to correlation of judicial statistics with other types of statistical information, the void is quite complete.

Though the compilation of statistics in itself serves no purpose, the committee is of the opinion that without reliable judicial data from which to proceed, any attempt at a scientific evaluation of the judicial process is impossible. It would have been fortunate for the purposes of the survey if this work had already been done. Since it has not been done, and since it must be carried out as a means of making possible scientific work in law, the committee has undertaken the task. If it succeeds in formulating and installing in Ohio a system of judicial statistics that will show something, it will have accomplished a lasting service.

The problem of precisely what such records should show is one of

[6] In discussing the matter, W. F. Willoughby says: "There is an almost complete absence of statistical data regarding the operation of courts in the adjudication of civil cases. Nor is there much in the way of consideration of the problem of devising and operating a system for the collection and presentation of such statistics." *Principles of Judicial Administration,* 647. Albert Kocourek has also called attention to this dearth of statistical data in civil cases. See "The Need for Statistical Information in Civil Litigation," *Jour. Amer. Judic. Soc.* (Apr., 1918).

[7] Criminal judicial statistics have received more attention. (See Willoughby, *Principles of Judicial Administration,* 648-650). But even in this field much work must be done. Raymond Moley, in discussing the subject, says: "Such scanty reports as we have from a number of police departments, a few attorney-generals, and a few other officials are almost useless for comparative purposes. Records are likewise inadequate. A vast amount of criminal law administration is conducted without records. Much of the remainder is hidden in antiquated and inaccessible dockets, in irregularly filed court papers, and in the generally unintelligible and sometimes dishonest records of city police departments." *Politics and Criminal Prosecution,* 35.

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great difficulty, since so little has been done to point the way. As tentatively outlined by the committee, the purposes governing the formulation and installation of the desired records center on several points: (1) the effective business organization and management of courts; (2) the compilation of data for the use of judges, legislators, judicial councils, scholars, and others interested in improvement of the judicial machine; and (3) the compilation of data which will show the legal process in its social setting, which of itself is a tremendous undertaking. The committee will probably experiment long and carefully before setting up a definite system of records to be used permanently.

On the side of research projects also, emphasis is being placed on permanent results. It is assumed that every such project undertaken will result in a valuable contribution in and of itself; and, in addition, that each separate project will fit into a comprehensive program of study of the administration of justice in the state.

The specific research tasks contemplated for 1930 involve at the outset: (1) an analysis of the civil judgments, and later an analysis of divorce cases and criminal prosecutions, in the common pleas courts; (2) a study of litigation in the courts of appeals and the supreme court; (3) an analysis of the work of the municipal courts. This survey will provide a continuous flow of objective data which will enable the committee to find out to some extent how residents of Ohio are affected by various types of litigation. It will lead to a series of studies concerning the human effects of the judicial process, such as the Institute of Law of Johns Hopkins University has been established to develop. The studies may show, among other things, whether the cost of litigation in time and money is disproportionate to the results; how litigation is affected by the character of the judiciary and the bar; the relationship of litigation to industrial background; and what procedural matters need special study.

The analysis of civil judgments (excluding divorces) rendered in the common pleas courts of Ohio, January 1, 1930, to December 31, 1930, will involve: (1) the preparation of data cards to be filled in by clerks in the various counties;[8] (2) the setting up of special ma-

[8] This is a tremendous task, and one which might easily meet with many difficulties under less fortunate circumstances. In the more populous counties, additional help in the clerk's office has already been required. The statute establishing the judicial council makes coöperation from such sources compulsory,

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chinery in jurisdictions in which the number of civil common pleas cases brought annually is too great to permit the clerks of court, in addition to their regular duties, to take upon themselves the additional burden involved in reporting on industrial cases; (3) reducing the data as to individual cases to code and transferring them to cards for the tabulating machines; (4) the analysis and interpretation of data; (5) the study of the whole field preliminary to the formulation of an effective recording system.

The data cards now in use require information as to the age, sex, residence, occupation, and status of the parties involved; the type of case; origin of case; trial or disposition of the case; the amount involved; the time consumed between the filing of the petition and the final disposition of the case; the time consumed between successive steps in the case, as, for example, the time between the filing of the petition and the beginning of the trial; and the time between the beginning of the trial and the satisfaction of the judgment.

The information secured should be very useful indeed. The evils springing from delay have been repeated to the point of monotony by all commentators on the judicial process.[9] In California, Delaware, Idaho, North Dakota, Oregon, and Pennsylvania, legislative action has been taken to eliminate delay in criminal trials, including shortening the time within which appeals can be taken.[10] If there is delay in Ohio, it should be demonstrated beyond dispute.[11] Steps might thereupon be taken in an intelligent fashion to correct the matter. In California,

not optional. This is important in getting the help of such officers. The fact that the survey is under the auspices of the judicial council and in active coöperation with the Bar Association gives greater possibility for the successful administration of it than any strictly private venture could hope to secure.

[9] W. L. Ransom, "The Law's Delays—Causes and Remedies," *Proceedings of Acad. of Polit. Sci.*, vol. x, no. 3 (July, 1923), pp. 179-182; Robert F. Wagner, "The Law's Delays," *ibid.*, pp. 182-187.

[10] Justin Miller, "Activities of Bar Associations and Legislatures in Connection with Criminal Law Reform," 18 *Jour. Amer. Inst. Crim. Law and Criminol.* 381 (Nov., 1927).

[11] "No single agency," declared Chief Justice Taft, "to induce Congress and the state legislatures to improve the administration of the criminal law could be more effective than the practical truth in respect to the condition of our courts in the prosecution of crime, and nothing could more stimulate a demand for greater speed in the disposition of civil cases in behalf of the litigating public than the truth as to the delays and congestion in the civil dockets." *Report of Federal Judicial Council,* Attorney-General of U. S., Annual Report (1926), 7.

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measures to clear the congested dockets were taken speedily when once the facts were definitely ascertained by the judicial council.[12]

Information is sought also concerning the number of cases involving traffic and installment sales. If the use of the automobile and the payment plan have added to the work of our courts, some accurate information with regard to the matter should prove useful. The data sheet containing these questions will be used for a short time, possibly three months, when it will be replaced by a revised sheet which will probably be more concerned with procedural matters.

The reason for selecting civil judgments in the common pleas courts for 1930 as the subject-matter for the first specific research inquiry is that, though over fifty per cent of the common pleas cases fall into this class, it is nevertheless practically neglected in Ohio judicial statistics. Any attempt at a complete study of judicial administration must await exploratory work in this neglected area. Fortunately, this field lends itself readily to an objective, statistical approach. The investigation, too, should arouse interest and secure the active participation of many persons throughout the state.

The analysis of litigation in the appellate courts of the state, which is the second specific research task to be undertaken during 1930, will be concerned, first, with litigation in the supreme court during 1927-28 and 1928-29. This will involve an analysis of some thirteen hundred cases, including cases on the merits and rejected motions to certify record. The study will be concerned, secondly, with an analysis of approximately three thousand cases in the court of appeals for the year January 1, 1930, to December 31, 1930.[13]

This field has been selected for immediate attack because of the relatively small number of cases to be covered, and also the relatively greater accessibility of the data (as compared with the common pleas civil judgments), which makes possible a fairly detached and precise analysis of this important section of Ohio's court work. It is also considered important to conduct some studies in the first year of the survey of a more intensive character than the general analysis of the common pleas civil judgment cases will provide. The proposed studies lend themselves readily to objective and statistical analysis, can be pushed to completion, and are well designed to secure active participa-

[12] *First Report of the Judicial Council of California* (1927), 29.

[13] The data sheet for the appellate courts and supreme court will probably be put into operation by July 1.

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tion by key persons in the state. They are also fundamental to the development of a state-wide system of adequate judicial statistics. The committee is insistent that the statistical records of all parts of the system shall be tied together.

A third specific task which is to be started during 1930 is an analysis of the work of the municipal courts. This study will undoubtedly be carried on well into 1931. This field has been selected for early study because of the importance of the municipal courts in the judicial scheme of affairs in Ohio. The number of cases tried in such courts would of itself justify early attention. In 1928, in the municipal court of Cleveland alone, 54,764 civil cases and 108,880 criminal cases were disposed of. This means a total of 163,644 cases, as compared with 93,385 common pleas cases in the entire state for the same period. Reports made on the large amount of litigation in the municipal courts are mostly inadequate.

From the point of view of the impact of the system of justice upon human welfare, the work of the municipal courts is strategic. Economic and social situations are involved which are only indirectly reflected in the work of the higher courts. A special advisory committee is now being organized and will recommend the direction which the study of the municipal courts can most effectively take, as well as the particular investigations which such a study will involve. Inasmuch as the jurisdictions of the common pleas courts and the municipal courts have a close connection, it is planned to study the two sets of courts, in so far as possible, concurrently. This will be especially helpful in establishing a satisfactory system of judicial statistics.

The specific research projects for 1929-30 here set forth are presented rather to suggest than to indicate definitely the scope and character of the survey contemplated. Though plans have been made for the complete undertaking, they are still largely tentative and experimental. The committee of direction is anxious to avoid drawing up a definite program until after it has made a careful study of available research personnel and has secured much counsel and advice in the matter.

Although no definite program is as yet possible, certain areas of study have been listed which will undoubtedly receive attention. These are: (1) the field of agencies concerned with law administration;[14]

[14] This might include: (1) the judicial machine proper; (2) administrative

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(2) studies connected with the efficient functioning of these agencies;[15] (3) studies connected with suggested changes in judicial administration;[16] (4) studies in the field of legislation; (5) certain outstanding social aspects of the administration of justice;[17] and (6) certain actual experiments which might be worked out.

Whatever lines the work may eventually take, it will be comprehensive; the directors of the survey are all quite agreed on that. The judicial council is concerned with securing a systematic analysis of the whole judicial system, and the Institute of Law is likewise interested in making a thoroughgoing state-wide study of the judicial

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commissions engaged in law administration; (3) the relationship of the executive branch to law administration; (4) the work of non-governmental agencies engaged in law administration. The studies of the judicial machine proper would include studies of the supreme court, the appellate courts, the common pleas courts, the probate courts, the municipal courts, the domestic relations courts, the conciliation courts, etc. Public utilities commissions, workmen's compensation commissions, and such administrative commissions concerned with law administration would also be studied. In studying the relationship of the executive law administration, special investigations might be made of the work of the governor, attorney-general, prosecutors, police, sheriff, and coroner. Non-governmental agencies engaged in judicial work which might be studied would include commercial arbitration boards, boards of trade, trade unions, etc.

[15] This might involve: (1) the statistical studies already mentioned; (2) studies of the personnel aspects of judicial administration, i.e., selection, tenure, transfer, promotion, education, removal, etc.; (3) studies of the bar of the state, legal education, requirements for admission, activities of the State Bar Association and local bar associations, etc.; (4) special studies in the substantive law, e.g., installment contracts, small loans, incorporation acts, etc.; (5) special studies in the procedural field; (6) special studies of administration of criminal justice, either a series of dovetailing studies or a comprehensive survey; (7) studies of the physical surroundings of the courts, e.g., quarters, architecture, adequacy, appropriateness, etc.

[16] The whole problem raised by suggestions of having "a unified court" or "a ministry of justice" might be considered. Proposed modification of existing judicial machinery might be studied, e.g., different use of grand and petit jury, possibilities of securing "expert" juries, greater use of commercialized arbitration, and specialized courts for special purposes.

[17] Studies might be made in the field of juvenile delinquency, divorce, etc.; in the cost of litigation, visible and invisible, to the participants and to the state and community; the costs of corrective institutions; the costs of wasted man power, etc. The possibilities of psychology and psychiatry as tools to be used in the administration of justice might receive attention; also problems in connection with parole, probation, and penal institutions.

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process in a populous state. Every effort is being made to organize the work thoroughly. Lawyers and judges are helping to form the program. Leaders in industry and business are to have a hand in the work, and the social scientists of the state will be called upon to extend their service. Judicial councils in other states will be consulted, and men who have gained valuable experience in similar surveys throughout the country will be called on for advice, and in some instances to take over particular portions of the study.

The survey would be an interesting experiment if judged from the viewpoint of technique and methodology alone. It represents an attempt adequately to organize technical research in a field of judicial administration, with its proper social setting given more than passing consideration. The study will not be limited to the actual operation of the courts, but will attempt to go beyond that and to look into the causes and effects of law administration in the social process. In doing so, it will give basis for much encouragement to those interested in a more intelligent approach to our social problems.

F. R. AUMANN.

Ohio State University.

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FOREIGN GOVERNMENTS AND POLITICS

EDITED BY WALTER J. SHEPARD

Ohio State University

Popular Participation in Swiss National Council Elections. It is difficult to compare popular participation in Swiss elections with that of any other democratic country in Europe. The smallness of the country, the rugged nature of the land, the diversity of languages, the strength of the traditions of local self-government, the variety of political institutions, and the multiplicity of elections make Switzerland a unique place for political experiments. The composition of the Swiss electorate is very similar to that of the French. Every Swiss male citizen, twenty-one years of age or over, is allowed to vote, unless excluded by the laws of the canton in which he resides. However, the duties of the French and Swiss electors are far from being alike. In France the electors vote every four years for the deputies, while in Switzerland there are elections on federal questions every year, to say nothing of the cantonal and municipal elections. The elections to the lower house of the Swiss national legislature, the National Council, are held every three years. These elections do not have the same importance as English or French legislative elections, because the Swiss constitution limits the powers of the national legislators. Furthermore, the Swiss plural executive system detracts from the dramatic quality of the National Council elections. The executive is not responsible to the lower house as in countries having the parliamentary form of government. Making allowance for the fact that some of the cantons have compulsory voting, one might expect to find a lower record for participation in elections to the Swiss National Council than in elections to the French Chamber of Deputies, the latter body having undivided national power and, in addition, control over the executive.

An examination of the national voting records of the respective countries shows that prior to 1919 interest in legislative elections was much less in Switzerland than in France. Since all the inhabitants are registered by the police, as in France, the lists of registered voters

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contain practically all the qualified electors.[1] In the canton of Zürich, the difference between the electors' lists and the census figures was about one per cent.[2] The figures can therefore be regarded as fairly accurate. Below is a table showing popular participation in Swiss national legislative elections since 1901:

Year[3]	*Registered voters*	*Vote Cast (First balloting)*	*Per cent*
1902	759,042	431,824	56.8
1905	780,792	439,169	56.2
1908	809,570	425,702	52.5
1911	829,759	437,766	52.6
1914	847,029	394,789	46.6
1917	913,040	548,212	59.9
1919	946,271	760,600	80.4
1922	983,238	750,859	76.4
1925	995,551	764,594	76.8
1928	1,043,823	822,389	78.8

Since the passage of a new electoral law in Switzerland in 1919, there has been little difference between the voting efficiency of that country and France. In order to understand the factors that have increased the size of the poll in Swiss legislative elections, it is necessary to describe briefly the election system in operation before 1919. Under the old system, the National Council was elected in part according to the majority block system and in part according to the single member district system. In each of the districts the candidates were elected who obtained a majority of the votes cast. If no candidate obtained a majority on the first balloting, a second balloting was held at which a plurality was sufficient. The effect of this system was to give the most numerous party in a given district a decided advantage and to discourage voting for minority candidates. In 1911, only 52.6 per cent of the registered electors took part in the election of national councillors. In the cantons of Tessin and Vaud, where the minority

[1] Schweizerische Statistische Mittilhungen, *Statistik der Nationalratswahlen, 1919, 1922, 1925, und 1928*, p. 17. In general, the number of registered voters is probably a little too high.

[2] A Senti, "Die Nichtwähler in Zürich," *Züricher Statistiche Nachrichten*, 1926, No. 4, p. 164.

[3] The figures before 1919 were obtained from *Annuaire Statistique de la Suisse*, 1902, p. 309; 1908, pp. 347, 358; 1918, p. 289. The figures for 1919 and after are from *Statistik der Nationalratswahlen, 1919, 1922, 1925, und 1928.*

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parties were weak, less than a third of the electors went to the polls. In the fall of 1914, only 46.6 per cent of the registered vote was cast. This falling off was caused by a truce declared between the parties at the beginning of the war. Three years later, the socialists broke away from the coalition and started a campaign of their own against the government.[4] The unrest in the country and the challenge presented by the socialists brought out 59.9 per cent of the listed voters in 1917. However, this record was still far short of the French pre-war voting records. In the Catholic canton of Fribourg, only one-third of the vote was cast in this year. The experience of Switzerland before 1919 shows that the majority election system operating in a federal state with a council type of executive-legislative relationship does not bring out a large poll on election day.

At the middle of 1918 the minority parties in Switzerland presented a constitutional initiative providing for proportional representation in national elections.[5] The Radical party, which held a majority in the national legislature, was compelled to discuss this measure, but refused to act favorably upon it. The proposition was then brought to a referendum vote, and the opposition of the Assembly was overruled by the people. The federal law of February 14, 1919, provided for the application of the new system in the fall elections. Each canton or half-canton was made an electoral district and assigned as many seats as its population contained the number 20,000. The four districts that contained less than this number were assigned a single seat each.[6] In all other districts two or more representatives are elected and the principles of proportional representation are applied. Not later than twenty days before the election each party has the right to publish its list of candidates, undersigned by fifteen voters in the district and bearing a distinctive title. Each voter can vote for as many names as there are representatives to be elected from the district, but he is obliged to choose names from the published lists. Every vote which a candidate receives also counts as a vote for the party on whose list he is running. The voter is free, on his own initiative or

[4] C. G. Picavet, *La Suisse* (Paris, 1920), p. 242; E. Fueter, *Die Schweiz seit 1848* (Zürich, 1928).

[5] In 1900 and in 1910, similar proposals were voted down. W. Burckhardt, *Eidgenössiche Wahlgesetzgebung; Das Proporzgesetz* (Bern, 1919). See also F. Fleiner, *Schweizerisches Bundesstaatesrecht* (Tübingen, 1923).

[6] Unopposed returns were permitted in these districts.

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on that of the party, to use his vote to help the candidates he likes best by writing the names of those candidates twice. This is known as the private or the official *cumul.* In order to assign seats, the total vote for each party in a given district is ascertained. A quotient is worked out on the basis of the total vote cast.[7] Each party list is entitled to as many members in the National Assembly as the quotient is contained in its total vote. In case any seats are left after the first division by the quotient, they are assigned to the list which would have the highest average vote per seat if it received that seat. The candidates elected from a given list are those who receive the most votes. The system is practically the same as that used in many of the Swiss cantons.

The influence of proportional representation upon the size of the poll in elections since 1919 is unmistakable. It is true that the elections of 1919 were very hotly contested. The socialists hoped to be the chief gainers from the new law. They put forth extraordinary efforts during the campaign. The conservative elements, in turn, alarmed by the general strike which had been attempted the previous year and by the extreme demands of the socialist leaders, also put forth unusual efforts. When the returns were in, it was seen that 80.4 per cent of the registered vote had been cast, 20 per cent more than at any of the previous elections discussed. An examination of the detailed records shows that this increase cannot be accounted for alone on the ground that the socialist campaign aroused interest. The most marked increases came in the cantons where the Socialist party was very weak and the Catholic Conservative party correspondingly strong. In Fribourg, Solothurn, Ticino, and Valais, where the Protestant voters had been discouraged under the old system, there were 20 to 50 per cent increases in the size of the poll. These increases can be largely traced to the new system of voting. This conclusion is borne out by the fact that the poll in the elections of 1922, 1925, and 1928 did not fall below 76 per cent of the registered vote, although the element of uncertainty as to the socialist strength was lacking in these elections. The relative position of the parties has changed little since

[7] The Droop quota is used. This quota is obtained by dividing the number of votes cast by the number of candidates to be elected plus one and completing the quotient to the next whole number. See C. G. Hoag and G. H. Hallett, *Proportional Representation* (New York, 1926), p. 421.

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the first application of the new law.[8] Proportional representation in Switzerland has stabilized the party situation and has kept the interest in national elections at a fairly high level in spite of the peculiar form of the Swiss government.

An analysis of the size of the vote cast in the different cantons at the 1925 National Council elections brings to light many interesting features. The highest voting records were found in those cantons having compulsory voting. As far back as 1835, the canton of St. Gall made absence from the district assembly elections, without sufficient excuse, punishable by a small pecuniary fine. This law, as reenacted in 1867 and 1890, specifies a series of legally valid excuses, which include "illness in the family, mourning for a relative, absence, birth in the family, and official business." In the five German cantons where obligatory voting has been longest in operation, the size of the poll has been uniformly higher than in the rest of the country. In the 1911 elections, 74 per cent of the registered vote was cast in the cantons having compulsory voting, while only 43 per cent was cast in the cantons without. In 1928, the poll in both classes of cantons was much higher, due to the influence of proportional representation; but the cantons with compulsory voting still maintained a marked superiority over the others. In the former group, 86 per cent of the registered vote was cast; in the latter, 72 per cent. Thus it can be said that compulsory voting in Swiss cantons where it has been tried has been a considerable stimulant to voting, irrespective of the system of representation.

The methods used to compel the voters to exercise the suffrage differ somewhat from canton to canton, and there is a corresponding variation in their effectiveness. In Zürich, every voter is obliged to return the envelope which serves for purposes of identification, either with or without a ballot, within an interval of two days after the election or pay a fine of one franc to the collector who comes after the envelope. In Schaffhausen, non-voters are punished with a fine of one franc; in St. Gall, two francs; in Aargau, from one to four francs; and in Thurgau, one franc.[9] Since 1924, compulsory voting has been

[8] The best analysis of post-war election statistics is found in *Statistik der Nationalratswahlen, 1919, 1922, und 1928.* See also H. Joneli and E. Wyss, "Statistik der Nationalratswahlen von 1919 und 1922" *Zeitschrift für schweizerische Statistik und Volkswirtschaft,* 1923, vol. 136, pp. 77 ff.

[9] F. Bonjour, *Real Democracy in Action.* In St. Gall, voters over 60 years of age are excused.

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applied in the canton of Vaud to all votings on federal measures.[10] Although the law applied only to the vote on propositions, it had an indirect effect upon the participation in the 1925 National Council elections. According to the law, every eligible voter who does not take part in the federal popular law-making process is obliged to present an excuse in writing to the prefect within two days after the election. Illness or absence from the commune are admissible excuses. Unexcused absences are made subject to a penalty of two francs. Although the French Swiss do not look with favor upon compulsory devices, the effect of the law of 1924 was immediate. In 1922, under the voluntary voting system, 67 per cent of the registered vote was cast in this canton, while in 1925 and 1928, under the new system, over 83 per cent was cast. While this record is not as high as that in Schaffhausen, where 92 per cent of the electors came out in 1925, the number of blank ballots in Vaud was only one per cent, as compared with 6.4 per cent in Schaffhausen.[11] While the operation of compulsory voting in Switzerland is not as efficient as in Belgium, it is nevertheless a useful device in notifying the Swiss citizens of their many electoral duties. In all the cantons where it has been used, it has lightened the burden of the party organizations in getting out the vote.

Among the cantons without compulsory voting, some have much poorer voting records than the others. It is easy to understand the causes of non-voting in the Catholic *landesgemeinde* cantons of central Switzerland. Obwalden, Nidwalden, and Uri each return a single member to the National Council, and the election is held on the majority principle. Since the result in these districts is a foregone conclusion, it is hard to bring the voters to the urns. It is more difficult to explain the causes of the relatively large amount of indifference to voting in the cantons of Geneva, Neufchâtel, and Ticino. In Geneva, between 50 and 60 per cent of the electors come to the polls in national elections. In these cantons, especially Geneva, there is a proportionately larger number of naturalized citizens. It would be expected that the naturalized Swiss would show less interest in na-

[10] *Loi du 17 novembre 1924 sur l'exercice des droits politiques* (Lausanne, 1924).

[11] Schaffhausen has the worst record in this respect. In all the cantons having compulsory voting taken together, 1.6 per cent of the ballots were blank, and 1.2 per cent spoiled, in 1928.

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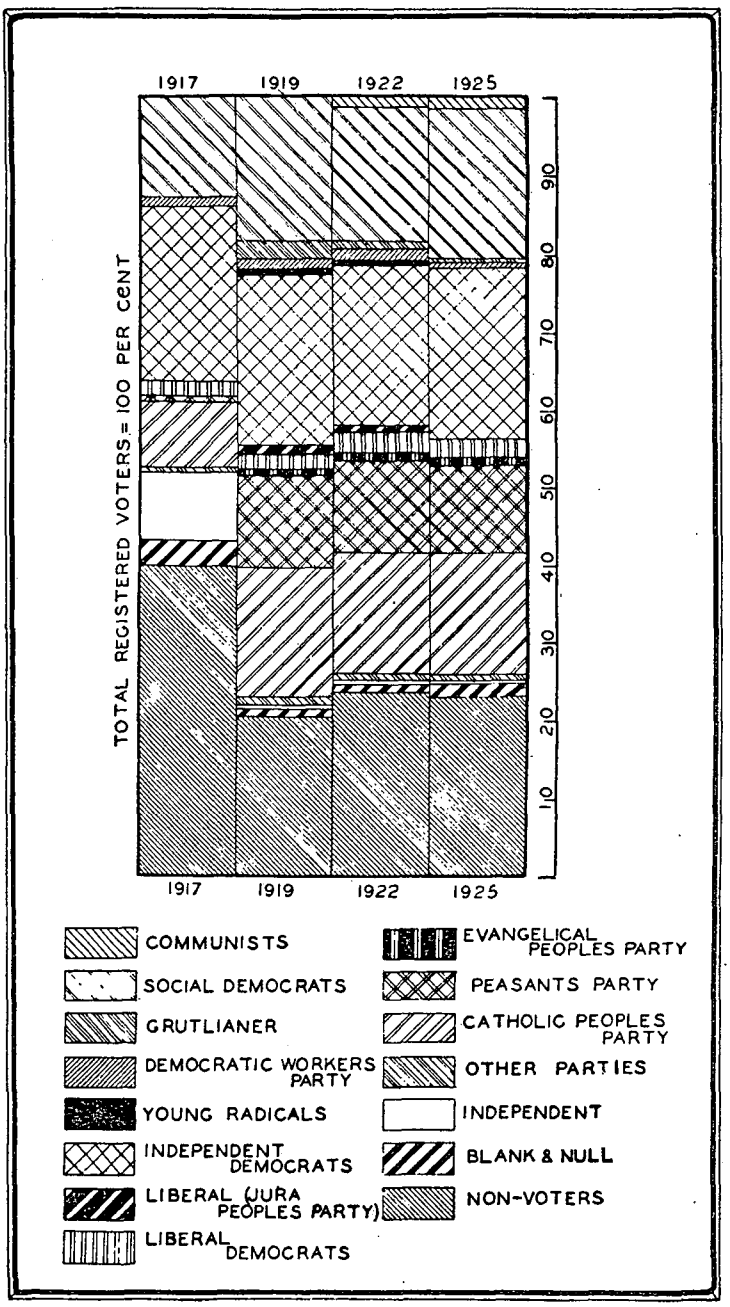

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tional politics than do the native-born Swiss. Besides, a multiplicity of elections in these cantons has worn out the patience of the voters. These cantons have had the longest experience with proportional representation for their own cantonal elections, and the federal law of 1919 was less of a novelty.

Electoral devices such as proportional representation and compulsory voting are useless unless the vital forces of party organization are behind them. This is true in Switzerland as in other democratic countries, in spite of the fact that authors like Bryce[12] and Brooks[13] have commented upon the placidity of Swiss politics. Popular participation in national legislative elections is now only slightly lower in Switzerland than in France or in pre-war Britain. It is obvious that the party organizations have responded to the challenge of the new system.[14] This result is shown diagrammatically in the accompanying chart.

One of the strongest national parties in Switzerland at the present time is the Independent Democratic (Radical) party, which polled 220,135 votes in 1928, or 27 per cent of the total vote cast.[15] In the days before the electoral law of 1919, this party had a majority in its own right in the National Assembly. Under the new law the party suffered defections in some of the cantons. However, the party is still the chief organ of political expression of the peasants, the merchants, and the business men in the Protestant cantons. It holds annual meetings to decide upon important questions of policy, but it is built on cantonal rather than national lines. At the 1926 conference of the party the referendum on the wheat monopoly was discussed and passed upon.[16] The vote on this measure showed that the party was far from united. The Germanic elements, which predominate, are conservative

[12] J. Bryce, *Modern Democracies* (New York, 1921), vol. I, p. 423.

[13] R. C. Brooks, *Government and Politics of Switzerland* (Yonkers, 1918), p. 305.

[14] In 1928, party strife was severe in the following cantons: Luzern, Schwyz, Fribourg, Solothurn, Grisons, and Valais. In each of these cantons, over 80 per cent of the registered voters took part. In all but Grisons and Valais, around 85 per cent took part. On the parties of Switzerland, see Reichesberg's *Handwörterbuch*, vol. I, pt. 1, pp. 245-94, "Politische Parteien."

[15] The figures for total party votes must be estimated. The method of making estimates is explained in *Schweizerische Statistische Mitteilungen: Statistik der Nationalratswahlen, 1919, 1922, 1925, und 1928.*

[16] *Journal de Genève*, May 19, 1926.

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and centralistic, whereas the minority French-speaking group is opposed to centralization and more socialistic. Since the party has never been as thoroughly organized as one of the major American or English political parties, it does not have a highly efficient electoral organization. However, in German Switzerland it has the support of the most powerful newspapers and can rely upon wealthy individuals for campaign funds.

The oldest rival of the Independent Democratic party is the Conservative Catholic party, which, like the other Catholic parties of Europe, is founded upon a strictly religious basis. After their defeat in the Sonderbund war of 1847, the Catholics formed a political group to further their peculiar interests. The party now has almost undisputed control in the Catholic cantons of central Switzerland. The federal election law of 1919 encouraged both the Catholic and Protestant elements in these cantons to poll their full strength in national elections. Since the Catholic Conservative party is not equally important in all parts of the country, it is a strong cantonal rights party, especially in matters of education. In the 1928 general elections, its candidates received a total of 172,516 votes, which was 21 per cent of the total vote cast. In the industrial cantons of Solothurn and St. Gall, there is a Christian Socialist party made up of Catholic workingmen. However, the backbone of the party is composed of the peasants in the mountain communities, who are deeply attached to their church. In the Catholic *landesgemeinde* cantons, political and religious rites are very closely connected.

The introduction of proportional representation in Switzerland brought a new political group into national politics. At the 1919, 1922, and 1925 elections there were Peasants' party lists in the cantons of Bern, Zürich, Aargau, Thurgau, and Schaffhausen. It can hardly be said that a new national party had been formed, as these lists were put up by cantonal groups which had existed before.[17] A Peasants' party had been formed in Zürich in 1917, and one had been founded in Bern in 1918. However, in the national elections of 1928 the Peasants' party candidates received 126,961 votes, about 15 per cent of the total vote cast. This vote by no means represents the total electoral strength of the farmers in Switzerland. In most of the can-

[17] *Mitteilungen des Schweizerische Bauernsekretariates: Erhebungen über den Stand des landwirtschaftlichen Vereins und Genossenschaftswesens in der Schweiz im Jahr 1920* (Brugg, 1922).

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tons the farmers still align themselves with the traditional political parties. The union of Swiss farmers (*Bauernverband*), founded in 1897, under the leadership of men like Dr. E. Laur, had a total membership of 364,000 in 1921. This body is a loose federation of agricultural societies, and it strongly discourages the formation of a national Peasants' party, which would challenge its own influence. The cantonal Peasants' parties have cut most deeply into the strength of the old Independent Democratic party. On most questions this new group is conservative, anti-socialistic, and ardently patriotic, but on the wheat monopoly issue it united with the groups of the left. The only national tie between the Peasants' parties is the parliamentary union of the successful candidates. Electoral matters are handled entirely by the local societies.

The Social Democratic party is the most highly organized of the four principal party groups in the country. Its constitution is very similar to that of the German Social Democratic party. Membership depends upon prompt payment of the party dues and strict adherence to the national declaration of party principles.[18] The general program of the party includes opposition to militarism, the nationalization of the principal industries, the imposition of a capital levy, the prohibition of alcoholic drinks, the election of judges, and the adoption of a liberal labor code.[19] In general, the party favors the strengthening of the national government at the expense of the cantons. The party is strongest in the urban and industrial centers of Protestant Switzerland and weakest in the rural Catholic cantons. The cantons of Zürich, Bern, and urban Basel furnish one-half of the membership. The party has control of a larger proportion of the electorate in the canton of Aargau than in any other canton (29 per cent of all registered voters), but in no canton has it ever approached majority control. This situation may account for the fact that the Socialist party in Switzerland has had a less stimulating effect upon the size of the vote than the socialist parties of France, England, or Germany. It is difficult to trace in Switzerland any direct connection between the size of the socialist vote and the size of the total vote.

The Swiss Social Democratic party is not as highly organized as the British Labor party. It is not directly connected with the trade

[18] *Partei Mitgliedsbuch, Statut der Sozialdemokratischen Partei der Schweiz.*
[19] *Ibid.*

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unions and coöperatives, although most of its members are. In the 1928 elections it received 220,141 votes, or 27 per cent of the total vote cast. The actual number of socialist members in the National Assembly was increased from 19 to 41 in 1919 as a result of the application of the system of proportional representation. The number of dues-paying members in the party declined from 50,000 in 1920 to 32,000 in 1925,[20] but this did not mark any falling off in the socialist vote. The members of the party are divided into some 580 sections. The principal party organs are the executive committee, the central committee, and the annual congress. The congress is concerned primarily with matters of policy. It is composed of delegates from the local sections, members of the central committee, and the socialist members of the National Assembly. The decisions of the congress may be referred to a referendum vote of the party members. In 1919 the members of the party repudiated the decision of the congress to join the Third (Moscow) International. Thus it appears that the rank and file are less advanced than the leaders, many of whom were born in Germany and became naturalized Swiss. Social Democratic newspapers are found in fourteen cantons. Some of them are subsidized by the central organization, and all of them are devoted wholeheartedly to socialist propaganda. At election time, the party is active in organizing canvassers, holding meetings, and distributing circulars. A study made in Urban Basel showed that the discipline of the party as measured in terms of the percentage of straight party votes cast was greater than that of any of the middle-class parties.[21]

The four principal party groups in Switzerland have now been discussed. Passing mention should be made of some of the lesser parties, since they typify in some ways the localistic character of Swiss politics. On the conservative side, there is the Liberal Democratic party, which is found only in four Protestant cantons of western Switzerland, namely, Urban Basel, Vaud, Neufchâtel, and Geneva. In its economic policies, this party is very close to the Independent Democratic party. It has persisted as a separate organization because it has the support of some wealthy men and some powerful newspapers. In national elections it polls slightly less than four per cent of the total vote cast.

[20] Sozialdemokratische Partei der Schweiz, *Geschäftsbericht pro 1925.*

[21] *Basler Nachrichten,* October 27, 1925. Less than two per cent used their right of *panachage,* or splitting the ticket, as compared with eight per cent in the Independent Democratic party.

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Recently it has shown a tendency to combine with the other conservative groups against the socialists and young radicals. On the other end of the political scale is the Communist party, which was established in Switzerland in 1922 under the influence of the German example. In the 1925 elections its candidates received less than two per cent of the total vote cast. It drew practically all its strength from Urban Basel, Schaffhausen, and Zürich. Small in numbers, it maintained a rigid discipline; the Urban Basel study showed that a larger proportion of its members voted a straight ticket than any of the other partisans. The other minor parties, confined as they are to a few cantons, are based upon religious or economic foundations and are of practically no importance nationally.[22]

At election time the Swiss parties use the methods of propaganda that are common in other countries. In western Switzerland, campaign tactics are very similar to those used by the French. Election posters are put upon temporary stands located in prominent places. Public meetings are held in cafes, brasseries, school houses, and communal halls. Each city has a fine "electoral hall" at which the important meetings are held. The tone of the speeches at the larger meetings is dignified and fair. The speakers deal with the leading issues and do not indulge in personalities. The principal newspapers defend their views in a dignified fashion, but occasional scurrilous sheets are likely to appear. In German Switzerland, the campaign methods are more in accordance with Teutonic practices. The election posters appear only on the cylindrical posts reserved for advertising purposes; all parties buy advertising space in the official city newspapers; and because of the greater use of compulsory voting, the parties lay less emphasis upon emotional demonstrations to get out the vote.

Even though the parties have done their best to arouse interest in the election, many voters may fail to come to the urns if the voting arrangements are unduly burdensome. In Switzerland, as in France, Belgium, and Germany, elections are held on Sunday. Thus it cannot be said that Sunday elections are confined to Catholic countries. The voting process itself is a very simple one. There are no official ballots, but the parties are required to print their ballots and submit them to the officer in charge of the election twenty days before the

[22] The Democratic and Workers' party in St. Gall and Thurgau, the Evangelical Peoples' party in Zürich and Basel, and some lesser groups.

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day of the election. These printed ballots are placed inside the polling booths. In most of the cantons, the name of each voter is crossed off the register as he votes and he is given an *estampille,* or gummed label, which is signed by a member of the election board. In order to vote, the elector moistens his *estampille* and places it on one corner of the ballot which contains the candidates of his choice. This procedure insures the secrecy of the ballot and is also a fair check against repeating. In some of the cantons the voting system resembles more closely the envelope plan of France or Germany. In Zürich, each voter is sent an official envelope with all the party ballots inclosed. Here the voting proceeds briskly and each voter loses a minimum of time. If a voter wishes to make changes which cannot be readily marked on one of the printed ballots, he is furnished a blank ballot. Although elections are quite frequent in some of the cantons, national elections come once every three years and are never coupled with numerous local elections as in some American cities.

The question of non-voting can be studied to an advantage in Switzerland, because some of the cantons have kept very full election statistics. In the canton of Zürich, popular participation in National Council elections has been analyzed by the smallest election areas.[23] A study of these returns shows that interest in voting is greater in the purely agricultural regions than in the industrial and urban districts. For this, the organization of the Peasants' party may be in part responsible. In addition, it should be noted that the transient populations and the naturalized citizens found in the cities are harder to organize for political purposes than the stable native Swiss in the country districts. This same tendency has also been found in the cantons of Bern and Vaud.[24]

In Switzerland, as in Belgium, voting has come to be recognized as a public function. In six cantons, compulsory voting is employed. The National Council is elected by a system of proportional representation which gives recognition to practically all the minority groups. The old majority system of representation, which discouraged voting in some parts of the country, has given way to a system which insures nearly all the voters that their ballots will count. Elections are held on Sunday, and in the *landesgemeinde* cantons they are followed by a

[23] *Statistik der Wahlen in den Nationalrat in Kanton Zürich, 1919.*
[24] *Statistik der Nationalratswahlen, 1919, 1922, und 1928.*

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religious ceremony. The result of this attitude toward voting is that it has not been necessary for the Swiss to elaborate the same kind of party organizations and campaign techniques that are found in Anglo-Saxon countries. They do not have the same need for paid party agents or professional politicians as do the British and the Americans.

HAROLD F. GOSNELL.

University of Chicago.

The Czechoslovak Advisory Board for Economic Questions. A characteristic post-war institutional development has been the appearance, under one guise or another, of instrumentalities for the representation of functional or economic interests. There is scarcely a nation in Europe that has not in some fashion taken cognizance of social and economic groups by their recognition through definite legal agencies. Witness the Italian lower house, with representation based upon Fascist corporations; and note the Consiglio Superiore dell' Economia,[1] the German Reichswirtschaftsrat,[2] and the Conseil National Économique of France.[3] These bodies are too well known to warrant comment. Czechoslovakia, however, has an agency for expert economic counsel and guidance that challenges comparison and invites examination. Her Advisory Board for Economic Questions is noteworthy as one of the most carefully contrived of institutions for the representation of interests and classes. This board, together with the bodies just mentioned,[4] demonstrates the working compromises that have been made with parliamentarism in view of the ever-increasing technical complexities of the present day "public-service state."

Functional representation is recognized in varying forms in a large number of countries.[5] The mere extent of this development is signifi-

[1] Herbert W. Schneider, *Making the Fascist State* (New York, 1928), chap. iv., Carmen Haider, *Capital and Labor Under Fascism* (New York, 1930); Gerhard Leibholz, *Zu den Problemen des faschistischen Verfassungsrechts* (Berlin, 1928), p. 12 ff. For the relationship of Fascism to professional representation, see B. Mussolini, *Fascismo e sindacalismo* (Milan, 1925), pp. 269 ff.

[2] H. Finer, *Representative Government and a Parliament of Industry* (London, 1923); Von Siemons, "Germany's Business Parliament," *Curr. Hist.*, Sept., 1924.

[3] Edith C. Bramhall: "The National Economic Council in France," in this *Review*, Aug., 1926.

[4] For a general discussion of these four councils, see the writer's article "Legalized Lobbying in Europe," *Curr. Hist.*, Feb., 1930.

[5] The U.S.S.R., while accepting a vocational rather than a geographical basis

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cant of the change in attitude that is taking place toward the state. The concept has been acknowledged in word, if not in action, in the constitutions of Yugoslavia,[6] Poland,[7] and Danzig.[8] By decree or statute, the principle has been accepted in Spain,[9] Turkey,[10] Mexico,[11] and Japan.[12] Estonia, Latvia, and Luxembourg must likewise be added. There has been agitation in Norway for an economic council.[13] Plans have been considered toward this end in Greece, Austria, Rumania, and Portugal.[14] That Great Britain has established an Economic Advisory Council under the chairmanship of the prime minister was announced in the House of Commons on January 22, 1930. This council took over the functions of the committee on civil research, and is to extend its activities so as to constitute "a brain for thinking and acting for an industrial state."[15] Perhaps the most outstanding development in the United States comparable to the innovations abroad was the recent action of President Hoover in calling into formal consultation leaders in commerce and industry.[16]

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of representation, is in so clear a sense *sui generis* as to be beyond the scope of this discussion.

[6] Article 44. See discussion in Charles A. Beard and George Radin, *The Balkan Pivot: Yugoslavia* (1929).

[7] Article 68.

[8] Articles 45, 114.

[9] Royal decree of March 8, 1924, establishing the Consejo de la Economia Nacional. *Boletin de la Revista General de Legislación y Jurisprudencia* (1924), tome 188, p. 270 ff.

[10] Law of July 24, 1927.

[11] For the Mexican law, see *United States Daily*, Sept. 28, 1928, p. 2.

[12] Imperial ordinance of Apr. 1, 1924.

[13] *Informations sociales du Bureau international du Travail*, March 24, 1925.

[14] Friedrich Glum, *Der deutsche und der franzosische Reiswirtschaftsrat* (Berlin and Leipzig, 1929), p. 10; also M. M. Dendias, *Le Problème de la chambre haute et la représentation des intérêts à propos de l'organisation du Sénat* (Paris, 1930).

[15] *Manchester Guardian Weekly*, January 24, 1930, p. 66. A White Paper setting out the scope and functions of the new council will be issued shortly.

[16] In an editorial of December 28, 1929, commenting favorably upon President Hoover's move, the *Saturday Evening Post* suggested that a "definite organization" be devised for calling into periodic conferences the leaders of industry. They, "from the very nature of modern life, constitute a sort of third house whose operations are at times even more essential than those of Congress itself." See also the suggestion of a former prominent lobbyist of the Na-

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In the light of this widespread development, the question may well be raised as to the place of such functional representative bodies within the governmental structure.[17] The answer may be considered in connection with any one of the councils that has been in operation over a period of years, and, it is submitted, the same general conclusions will be reached. If Czechoslovakia's Advisory Board is studied, the deductions made therefrom are not fundamentally different from those which follow from a study of similar bodies in other countries. Thus the problems encountered in Czechoslovakia, it is believed, have a wide significance.

The Advisory Board for Economic Questions was instituted under authority granted in Article 90 of the constitution, which reads as follows: "State offices charged with economic functions, but without

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tional Manufacturers Association, in Nathan Williams, "Advisory Councils to Government," *Annals of Amer. Acad. Polit. and Soc. Sci.*, Jan., 1930, pp. 146-149.

[17] There is a rather extensive literature in French and German upon the subject of functional representation in general and of economic councils in particular. The following list is by no means exhaustive: Francis de Benoit: *La Représentation politique des intérêts professionnels* (Paris, 1911); Marcel Prélot: *Étude sur la représentation professionnelle en Allemagne* (1924); Martin Saint-Léon: *Histoire des corporations de métiers, 2ième éd.; L'Organisation professionnelle* (1905); *Les Systèmes de la représentation nationale des intérêts économiques en France et à l'étranger;* Henri Rollet, *Les Chambres d'agriculture* (1926); Camille Lautaud et Andre Poudenx, *La Représentation professionnelle* (1927); Sava Moyitch, *Le Parlement économique;* Gabriel Carrière, *La Représentation des intérêts et l'importance des eléments professionnels dans l'évolution et le gouvernement des peuples* (1917); Jacques Martin, *La Représentation politique des intérêts économiques: une solution: les conseils économiques régionaux* (1928); Léon Bouvier, *La Représentation des intérêts professionnels dans les assemblées politiques* (1914); M. Vermeil, *Le Conseil économique du Reich* (Vienna, 1923); Friedrich Glum, *Der deutsche und der französische Reichswirtschaftsrat. Ein Beitrag zu dem Problem der Repräsentation der Wirtschaft im Staat* (Berlin and Leipsiz, 1929); Heinrich Herrfahrdt, *Das Problem der berufsständischen Vertretung von der französischen Revolution bis zur Gegenwart* (Stuttgart, 1921); S. Schäffer, *Der vorläufige Reichswirtschaftsrat* (Munchen, 1920); Edgar Tatarin-Tarnheyden, *Die Berufastände, ihre Stellung im Staatsrecht und in der deutschen Wirtschaftsverfassung* (Berlin, 1922); Hauschild, *Der vorläufige Reichswirtschaftsrat, 1920-1926* (Berlin, 1926); (Dr. Hauschild, bureau director of the Reichswirtschaftsrat, now has under preparation a second volume dealing with the work of the council since 1926); George Bernhard, *Wirtschaftsparlamente von den Revolutionsraten zum Reichswirtschaftsrat* (Berlin, 1922).

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executive power, shall be established and organized by governmental decrees." In accordance with this provision, an economic advisory agency was set up by the government in 1919. This innovation by no means proved an unqualified success. Although a need was evinced for a technical advisory organization to aid Parliament, the establishment of the preliminary council was not greeted with enthusiasm. The laboring classes felt that inasmuch as they possessed considerable influence in the legislative body, an economic council might prove a hindrance to their power. Employers and business men, on the other hand, did not believe that the board could acquire much authority; while there were those in Parliament who viewed the new body as a potential rival in legislative control.

No clear delimitation has been made as to the precise sphere that an economic council is to occupy in relation to the other branches of the government. In greater or less degree, certain functions in the law-making process are assigned to such agencies. This is the case in Germany and France as well as in Czechoslovakia and elsewhere. But the right of limited participation does not convert an economic advisory board into a legislative body. There is a difference in essence between the two. The latter is inherently political in nature; and politics is concerned primarily with moral judgments on the facts of human activity. An economic advisory body has to do with the ascertainment of fact. A political body must answer the question, *Ought* a thing to be done? Unless one is to accept a specious doctrine of economic determinism, moral judgment cannot be eliminated from political affairs. If this responsibility of decision is fundamental to politics *per se,* what sort of social instrumentality is best adapted to attainment of the end in view? Not an assembly composed of spokesmen of special interests whose chief concern, both in fact and in theory, is with their particular group interests. If representative government is to survive, and if popular responsibility is to remain a premise, an easy surrender must not be made to the technician. The expert, in examining a problem, prognosticates certain consequences as the result of certain assumptions. From this course, this outcome; from another course, that outcome. But the selection of alternatives is beyond his province. Ultimates and aims are political; the ways and means, economic. The former may be met by a political assembly representing the general sense of the community; the latter, by a body of technicians speaking as the exponents of various expert attitudes. General

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consent is an essential to the first; a trivial incident to the second. The cleavage between economic facts and moral inclinations remains. Each one influences the other, but they remain distinct. The one is the task of the vocational advisory agency; the other of a political assembly.

If this differentiation of function is recognized, it follows that an industrial parliament does not have to be representative in the same sense that a political congress should be. The aims of the two bodies are basically dissimilar. A parliament must deal with facts and figures in arriving at its judgments. But the economic assembly should not have to depend upon a general social consent to support its recommendations. It need be representative only to the extent of including such a cross section of technical knowledge within its membership that the highest degree of expertness will be ensured.

The present council in Czechoslovakia, as reorganized and instituted in 1921, does not take sufficiently into consideration the distinctions just made. Today, the Advisory Board for Economic Questions consists of 150 members.[18] Of these, 60 representing laborers and salaried employees in industry, business, trade, and agriculture are nominated by their respective unions, and afterwards automatically accepted and appointed to the Board by the government. This likewise holds in the case of the spokesmen of the employers. The farming and industrial employing class select 60 members through functional organizations such as the Association of Czechoslovak Banks, the Central Association of Czechoslovak Industrials, the Trade Council, and the Chambers of Commerce. The remaining 30 members are chosen directly by the government from the ranks of economists or others in the important liberal professions. At least four of this number are picked as representatives of consumers.

This apportionment of membership makes the body primarily representative of vocational and economic forces, inasmuch as only one-fifth of the members—those chosen directly by the government—have a broader representative basis. In other words, the primary consideration apparently was to secure a fair cross section of the economic life of the nation. The representative character *per se* of the Board is

[18] For the pertinent statutes and a description of the structure of the Advisory Board, see the pamphlet issued by the *Ministerstvo Obchodu* entitled *Poradní sbor pro otázky hospodářské.*

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greatly stressed. This is further emphasized if the internal composition of the three chief groups is considered. The 60 members representing the employers are carefully subdivided according to the following arrangement. Fifteen stand for agriculture; and of these, seven are selected from Bohemia, three from Moravia, two from Silesia, and three from Slovakia. Of the 25 industrialist delegates, two speak for the central organization of industry, four for the mining interests, two for textiles, two for metallurgy, and one each for sugar, spirits, brewing, milling, malt, foodstuffs, wood, paper, building materials, porcelain, glass, ready-made clothing, hides, leather, and chemicals. Of the representatives of banking, two represent municipal savings banks; one, private savings banks; one, insurance companies; and four, other types of banking institutions. The State Artisans' Council, an advisory body dealing with matters of concern to artisans and traders, sends nine members, while the chambers of commerce for industry, artisans, and commerce each send a delegate.

In the case of the 60 representatives of labor, all trade unions are taken into account whose membership constituted at least one-sixtieth of the total membership of all labor unions during the year prior to the selection of candidates for the Board. Among the unions that qualify under this rule, the right to nominate members is distributed in proportion to the membership of the union. So far as the legal structure of the Board is concerned, it would appear that every effort has been made to render the composition of the body as broadly representative as possible.[19] The distribution of delegates among various specific industries and sections of the country seems to be even broader than that of the German Reichswirtschaftsrat.

[19] In a letter to the writer, a Czech student of public affairs, expressed this opinion: "The Board is composed in such a way that it gives the impression that it represents farmers, manufacturers, merchants, and entrepreneurs—as well as wage-earners and even men of science. But in reality it is a representation of entrepreneurs—of the chief branches of industry and big agriculture. The Advisory Board for Economic Questions is simply a decoration behind which the "interests" do what they like. The Board is, according to my opinion, used by the government for giving the impression that economic questions are settled after careful examination and many-sided consideration by a board of experts, nonpartisan in character. This, to be sure, is not true. For example, during the last numerous and protracted debates concerning the public administration of private liquor production the board defended, not the public interest, but rather the private interests of agrarian liquor producers and individual manufacturers."

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A minute subdivision ensuring the representative character of the council by no means guarantees that it will be public spirited in its consideration of questions. In fact, the public interest of the members is more likely to be in inverse ratio to their position as delegates from a specific industry or labor union. Their dependence upon private interests is further accentuated by the fact that they receive no compensation for their services on the Board, although their traveling expenses are paid. Furthermore, their appointment is only for three years. Their interest and loyalty can hardly be developed through an *esprit de corps,* since the Advisory Board very seldom meets in plenary session. The members consider their position as honorary, and their chief occupation is with their business in private life. The influence that the Board possesses comes in large measure from the importance and prestige of the individuals composing it, rather than from the repute of the organization itself. The Board is taken seriously because many persons of authority in the economic life of the nation are members, either of the council itself or, as invited experts, of commissions of inquiry. They usually cannot afford to spend a great deal of time or energy upon the work of the council.

The Board does not function without difficulties. A tendency to split upon public questions along economic lines, with entrepreneur pitted against laborer, results in protracted debates and makes compromise difficult. At best, the Board operates very slowly, and the political parliament cannot always wait until the economic assembly is ready to report. The Board has, nevertheless, presented a certain number of reports, which were compromises among its various factions. Thus, agreements were arrived at on matters concerning the housing problem, certain special taxes, and customs. Fortunately, some members frankly recognize that in the final analysis it is not the function of the Board to decide questions, but that it is their duty to discuss the more involved and technical legislative problems, clarify the issues, collect the pertinent data, and so prepare the way for intelligent judgment by the political assembly. A good deal of the criticism that has been leveled against the Board is due to a misapprehension of its real purpose. Not infrequently, it fails to reach a unanimous decision, with the result that it presents to Parliament two separate reports upholding two different points of view. While this would be disastrous in a political assembly, it may be entirely salutary

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in an economic advisory council, since data, not judgments, are the desideratum.

The Advisory Board for Economic Questions is connected with the ministry of commerce. The ministry supports the Board and invites the government to present to it for consideration all projects of economic importance. The sorts of bills presented are those which do not have an immediate political significance and are not the subject of active party controversy. For instance, the budget has never been referred to the Board; nor was an important bill dealing with social insurance; nor the reform of the administration, in which the Board had taken the initiative; nor the new tax bill, which was of foremost importance in the government program of 1926.

The questions presented to the Board are referred to the appropriate standing committee. It is here that the work is done; as stated, plenary sessions are seldom held. There has been but one full session in the last three years. The committees are selected by the whole body and are composed proportionately to the various interests represented. Standing committees are appointed as follows: finance, 35 members; social policy, 30 members; home produce and commerce, 30 members; international trade, 20 members; agriculture, 15 members; communications, 15 members; public administration, 20 members; housing and promotion of building, 15 members. In addition to these standing committees, special committees are selected for particular purposes. The committee on statistics is an example. Within the committees there is complete freedom of speech, and experts may be invited to attend the meetings.

When a problem is referred to one of the standing committees, the chairman appoints a member to take charge of the matter, and he prepares a report setting forth its nature. Thus the subject is brought to the attention of the members of the committees, of the ministries affected by the question, and of the interested members in both houses of the legislature. The report serves as a basis for a general discussion, held at the first meeting of the committee. It is then that the general character of a proposed bill is considered. Is the proposed legislation economically sound? When the problem is a simple one, it can be disposed of in one or two debates of the committee. But in more complicated cases the usual procedure is to appoint a special subcommittee to consider the proposed law, paragraph by paragraph. Often the testimony of experts from economic organizations and scien-

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tific and technical societies is considered by the sub-committee in formulating its report. The report usually goes directly from the committee to Parliament, without an intermediate approval by a plenary session of the Board. The secretariat simply notifies the ministry concerned, and the government, in presenting the proposed law to Parliament, mentions the collaboration of the Advisory Board. Working through committees rather than in plenary session is characteristic of economic councils, and in consequence the meticulous subdivision of the membership to include spokesmen from all trades and classes seems futile.

The government is not obliged to call the recommendations of the Board to the attention of Parliament. The Board is no more than a subsidiary advisory body, and hence its proposals can be disregarded and its disagreement ignored. "The arbitrary judgment of the Advisory Board naturally is in no way binding for Parliament or government policy," writes one Czech authority, "but practically it would be very unpopular to pass a bill directly against an opinion of the Board." Politicians do take the Board into consideration; they are careful not to forego any support that may thus be added to their case. Definite methods of contact between the political and economic bodies exist. Public officials and legislators may attend the committee deliberations of the Board, while experts from the Board may be called to appear before committees of Parliament.

Perhaps the clearest fashion in which to indicate the functions and accomplishments of the Advisory Board is to list in turn various matters dealt with by its committees.[20] In 1928, ninety-nine committee meetings were held, and among the matters considered were the following: (1) Methods of collecting statistical data. (2) Reform of civil and criminal law, with especial reference to economic factors. Recommendations of the Board were presented to the committees of the ministry of justice appointed to suggest reforms of civil and criminal law. (3) Protection of consumers in installment buying. Recommendations offered by the Board were accepted for the greater part by the ministry of justice and elaborated in a new bill. (4) The production and taxation of spirituous liquors. The dispute about the future regulation of distribution of production among the interested groups of producers

[20] Reports on the current work of the Advisory Board are to be found in the official publication *Věstník ministerstva průmyslu, obchodu a zivmostí,* in the special section on the *Poradní sbor pro otázky hospodářské.*

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is not yet solved, but the main principles of the new law and important technical recommendations of the Board have already been accepted by the government. (5) The production and taxation of beer. The small breweries desired a consumption tax on beer, based upon a progressive scale. The Board recommended a uniform tax for the whole industry, with certain privileges for the smaller producer. As a possible solution, it suggested that a voluntary understanding be arrived at as to the output which each brewer might fairly undertake. This proposal was accepted and an agreement drafted. (6) Rationalization of industry. Upon the advice of the Board, Parliament extended the life of the law admitting free of duty machines not manufactured in Czechoslovakia. (7) Agricultural insurance against hail. Some of the farmers have requested governmental protection against such catastrophes; but it is still a matter of dispute as to whether state intervention should extend so far. The Board has not been able to reach any decision upon the matter, although many other problems have been worked out in close coöperation with representatives of the ministry of agriculture.

These illustrations exemplify the routine problems with which the Advisory Board concerns itself. Its most ambitious current problem is the elaboration of a national economic program for the next five years. Following the International Economic Conference held at Geneva in 1927, the Czechoslovak government invited the Board to give its opinion of the resolutions adopted there. The Board expanded this request into an inquiry as to the direction that economic activities of the country should take. To this end, a great mass of statistical data is being compiled. The Board hopes to draw a careful comparison of pre-war and post-war conditions, and thus to arrive at some conclusions as to the evolution of the national trend of production, consumption, and international commerce. The problem is immensely complicated by the great changes wrought by the war. Industrial regions that once were part of Austria-Hungary now belong to Czechoslovakia, while many of the pre-war home markets have now become foreign markets. In the face of considerable difficulty, the Board is compiling a census of the larger industrial establishments for the years 1913 and 1926.[21] It is attempting to ascertain the number of firms, of employees, and of machines, in order to show the changes that have

[21] Three parts of the statistics dealing with the larger industrial establishments for the year 1926 have been published. See *Statistika větších průmyslových*

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occurred in the economic situation between the two years selected. Customs barriers are examined, both at home and in foreign countries. The participation of Czechoslovak industry in domestic and international agreements is also being studied. It is upon the basis of such information that the Board will attempt a consideration of the principles of future commercial, agricultural, and industrial policy, export trade, commercial relations, customs, land reform, rationalization, and the various interrelations of industry and of business and agriculture. Should the body succeed in framing an acceptable economic program for the future, its reputation for usefulness will probably be assured.

The importance of the Advisory Board seems to have grown within the past year. This is particularly true since the election held in the autumn of 1929. This change reveals the fact that party alignments affect the relations between the economic and political assemblies. When the government included no socialist element, the Board, which was nearly fifty per cent socialist, had very little influence. Now that the partisan loyalties in both bodies are more nearly in the same proportion, the Board's advice assumes more significance. On the whole, however, the conclusion is inescapable that the rôle of the Advisory Board for Economic Questions has been a passive one.

For fact-finding and statistics-compiling, the agency is useful. Its power is dependent upon the quality of its recommendations rather than upon any authority behind its proposals. Obstacles to increased influence do not seem to be created intentionally by unsympathetic outsiders, but are due rather to inherent weaknesses within the body itself. The special interests of its members make agreement difficult. The government does not consult it upon controversial party questions. Nor is the political branch likely to encourage a rival assembly which is better equipped with expert knowledge to cope with economic questions. Where it will prove politically useful, the government is inclined to draw the attention of Parliament to the favorable attitude of the Board. Upon questions upon which the ministry and the Board are at variance, the position of the latter body can be ignored if expedient.[22]

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závodů v roce 1926. The fourth and last part will appear in the near future.

[22] This evaluation of the Board is based upon opinions arrived at after talking and corresponding with officials of the Board, politicians, editors, and students of public affairs in Praha.

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It is said of the Advisory Board that it has not fulfilled the hopes of its founders. The fault lies with the expectations rather than with the Board. Under parliamentarism, the expert must be content with a subordinate position. He is most effective as the permanent civil servant standing behind the amateur political administrator. Assembled in a body and brought into counterpoise to a parliament, the expert spokesman for economic interests finds that he is neither administrator nor legislator. Such a group has its function; but it is fundamentally an advisory, and not primarily a representative, function. The ministry needs advice in attacking the technical legislative problems for the solution of which it is responsible. It is as an adjunct to the executive authorities and to the administrative bureaus that an economic council has most to offer. Parliament's task is coming to be that of yea-saying or nay-saying. Sun Yat-sen insisted that "the function of the people in a democracy is to control the government, and that of the most capable men to operate it." It is as an aid to the latter, rather than as a spokesman for the former, that the economic council has its *raison d'être.*

E. PENDLETON HERRING.

Harvard University.

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The Kyoto Conference of the Institute of Pacific Relations. The third conference of the Institute of Pacific Relations met at Kyoto, Japan, from October 28 to November 9, 1929. Previous conferences had been held in 1925 and 1927 at Honolulu. It has been decided to hold the fourth conference in 1931 in China.

The Kyoto conference was the largest thus far held by the Institute. In all, 218 persons participated. Most of these were representatives selected by the seven national councils. The Japanese, with 48, had the largest group. The United States, with 45, came second, followed by China with 31, Canada with 29, Great Britain with 15, Australia with 11, and New Zealand with 6. In addition, there were subgroups of eight Filipinos and seven Koreans. Eight members of the Institute's Honolulu secretariat attended, as did observers from Soviet Russia, France, Netherlands, Mexico, the League of Nations, and the International Labor Office. The members were not in any case official delegates of governments. The national councils are voluntary, self-constituted, and self-perpetuating bodies, and in most cases they selected individuals to attend the conference with a view to the representation of numerous interests. The result was that frequently the closest affiliations of members cross-sectioned the national groups. For example, labor leaders from Great Britain (Malcolm MacDonald), Japan (Bunji Suzuki), Canada (Tom Moore), and the United States (Paul Scharrenburg) were often seen together. Each of the groups had women members, of whom there were 33 in all. The 72 university men constituted the largest professional interest, followed by bankers and business men (44), journalists (18), religious workers (17), and smaller numbers of members of parliaments, ex-government officials, social workers, lawyers, labor leaders, and physicians. The British group included an Indian nationalist and the United States group an American negro.

There was also considerable geographical distribution within each group. Thus the Chinese and Japanese groups each included several members from Manchuria, while the American, British, Canadian, and Australian groups included permanent residents in the Orient. Among the many distinguished people present may be mentioned Inazo Nitobe,

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member of the Japanese House of Peers and formerly under-secretary of the League of Nations, who served as chairman of the conference; Viscount Hailsham, lord chancellor in the recent Conservative government of Great Britain; F. W. Eggleston, formerly attorney-general and minister of railways of Victoria; Newton W. Rowell, formerly president of the Canadian privy council; Canon Streeter, of Queen's College, Oxford; President Chang Po-ling, of Nankai University, Tientsin, China; D. C. Wu, formerly governor of the Bank of China; Masanao Hanihara, formerly ambassador to the United States; Baron Sakatani, member of the Japanese House of Peers and formerly minister of finance; Yusuke Matsuoka, formerly vice-president of the South Manchuria Railway; Roland W. Boyden, formerly United States observer on the Reparations Commission; F. W. Frear and W. R. Farrington, former governors of Hawaii; and Sterling Fessendon, of the Shanghai municipal council.

This varied group of persons was brought together to discuss problems affecting the relations of countries bordering the Pacific Ocean —not to pass resolutions nor to reach conclusions, but rather to focus attention, to disclose points of view and promote understanding, to stimulate investigation and disseminate information. The results of a gathering with objects such as these cannot be stated with precision. They take a long time to mature, and the contributions of one conference cannot be dissociated from the influence of the other activities of the Institute. These activities include, in addition to the biennial conferences, a continuous program of research and continuous publication of information in the monthly journal *Pacific Affairs*, the biennial volume *Problems of the Pacific*, and occasional data papers and research reports. These three types of activity are, of course, interrelated, though each has a section of the secretariat devoted to it. Research furnishes the data without which discussion would be desultory, and discussion focuses attention on new fields in which necessary data can be assembled only after careful research. The recent conference stimulated the production of a five-foot shelf of books and pamphlets sponsored by the various national groups on subjects of interest to the Institute.

These continuing activities imply a permanent organization. The supreme authority of the Institute is the Pacific Council, a body of eight men. One is selected by each of the seven national councils, and a treasurer is selected by these seven. At present, Mr. Jerome D.

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Greene, of New York, chairman of the American national council, is chairman of the Pacific Council, having been preceded in that position by David Yui, general secretary of the national committee of the Y.M.C.A. in China and chairman of the Chinese group. He, in turn, was preceded by Junnosuke Inouye, now minister of finance in Japan, who was preceded by Ray Lyman Wilbur, now American secretary of the interior. The Pacific Council appoints the central secretariat at Honolulu and the international research committee, raises money by requisition from the national groups and from private subscription, and directs the general policy of the Institute, including the summoning and organization of the biennial conferences. The latter do their work through open forums and lectures and a series of round tables on specific topics, open only to conference members. The general secretary of the Institute is Mr. J. Merle Davis, whose retirement, however, was announced at the recent meeting. Mr. Charles P. Howland was selected as chairman of the international research committee, succeeding Professor James T. Shotwell; and Mr. J. B. Condliffe is research secretary and editor of *Problems of the Pacific.*

The interests of the Institute, extending as they do to problems affecting international relations over half the globe, are difficult to define. They have included not only current problems of practical diplomacy, but also fundamental economic, social, and political conditions and movements in the Pacific area. Although a diplomatic problem, wherever arising, may, and if serious, probably will, sooner or later affect the Pacific area, the Institute has tended to concentrate attention on problems in which either China or Japan is involved. There has also been an attempt to confine study of fundamental conditions to those which seem necessary for understanding these diplomatic problems, though in many cases this involves a study of world-wide conditions in such matters as trade, population, and industrialization. The work of the Institute has demonstrated that the Pacific cannot be treated as in any sense an isolated area.

At the Kyoto conference the most basic problems were considered first, in order to establish an adequate foundation for more detailed discussion, and also to assure smooth sailing before the stormy questions of current diplomacy were encountered. The agenda paper was headed by the topic "The Machine Age and Traditional Culture." While everyone admitted the profound effect which the harnessing of non-human power is having upon art, social practices, and moral

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conceptions in the West as well as the East, opinions differed on whether it is the substance or only the form of culture which is changing, and on whether the changes are to be approved or deplored. This discussion led into more concrete consideration of industrialization in China and Japan, the factors favoring and hindering it, and the economic consequences to be expected. The tendencies of population and the food supply, especially in the Orient, were next considered. That Japan has a problem to maintain her standard of living with the present rate of population increase was recognized by all. The possibilities of more intensive agriculture, of further industrialization, of migration, and of birth control were examined. Many valuable data papers were presented on these basic conditions, some of them the results of long-time researches. Among such investigations now in progress may be mentioned two on land utilization in the Orient, directed by J. Lossing Buck, of Nanking University, for China, and by Shiroshi Nasu, of the Imperial University of Tokyo, for Japan; two on agricultural production and consumption in the Pacific area directed by C. L. Alsberg, of the Stanford Food Research Institute; a coöperative study of foreign investments in China, directed by C. F. Remer, of the University of Michigan; and two studies of Chinese immigration, directed by President Chang Po-ling, of Nankai University, with respect to Manchuria, and W. J. Hinton, formerly of the University of Hongkong, with respect to Malaysia.

The latter half of the conference dealt with more immediate political problems, including extraterritoriality in China, diplomatic relations of the Pacific, and Manchuria. Of these, the last aroused the keenest interest. Extraterritoriality and unequal treaties, especially Anglo-Chinese relations on the subject, was the major political interest at the Honolulu conference of 1927, but at Kyoto the feeling was almost unanimous that the unequal treaties were going. The 1927 Institute session, together with other factors, had convinced the Chinese of the reality of the new British policy announced on December 18, 1926. Although the problems of time and manner in which the unequal treaties are to be eliminated gave ample grounds for differences of opinion, those differences were not such as to arouse the deepest feelings.

In the first session of the Institute in 1925 the American immigration exclusion act was the main topic of discussion. This immigration question was on the agenda in 1927, but at Kyoto it was not. In

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collateral discussions of the subject which occurred in the food and population round tables, several Japanese made it clear that the attitude of their country had not changed on this subject.

"Diplomatic Relations of the Pacific" resolved itself largely into consideration of the best machinery for implementing the Kellogg Pact. Many of the members took the position that a Pacific League of Nations distinct from the Geneva organization was impracticable and undesirable. At the same time, increase in the number of bilateral arbitration and conciliation treaties, general ratification of the optional clause of the statute of the Permanent Court of International Justice, and close coöperation of all Pacific countries with the League of Nations in Pacific matters were suggested as useful steps. It was pointed out that China and Japan are parties to comparatively few bilateral treaties of this type, while Soviet Russia and the United States are not members of either the League or the Court. Members from Australia and New Zealand were especially interested in the Four Power Pacific Pact of the Washington Conference, and some of them regretted the lack of permanent machinery for implementing it. The Sino-Russian hostilities going on at the time in northern Manchuria were recognized as an opportunity for testing the peace machinery of the Pacific, but the members seemed generally to consider it too early to form any judgment on the influence of this machinery.

Manchuria was the outstanding political issue discussed. While the Japanese and Chinese groups did not see eye to eye on this, the Institute made possible a series of meetings between leading members of these two groups in which the subject was fully discussed. Whether these discussions, or the general Institute discussions and data papers, will pave the way for better relations in Manchuria, it is too early to say. The Chinese wanted their government to have both sovereignty and the exercise of sovereignty in Manchuria, though some of them admitted that the recent action in relation to the Chinese Eastern Railway was unnecessarily drastic. The Japanese wanted adequate protection for their legal rights in Manchuria, which, however, they asserted were primarily economic in character. The exercise of certain political rights, such as the maintenance of police in the South Manchuria railway zone, they considered necessary until the internal administration of Manchuria shall be considerably improved. The Russian interest in Manchuria was represented only by an observer who did not feel free to speak.

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The Manchurian discussions and data papers, which included long contributions from the Chinese, Japanese, American, and British groups, proved most instructive to everyone. The economic potentialities of the region, the immigration of nearly a million Chinese and Koreans a year, and the combinations of economic and political rivalry connected with the investment of capital and the construction of railways conspire with the country's geographical situation between three important powers and athwart significant trade and strategic routes to make it one of the political danger spots of the world. No one doubted that Manchuria is Chinese territory in the meaning of the Washington and other treaties relating to the territorial integrity of China, and that the course of migration is steadily making it more Chinese in fact. On the other hand, it was pointed out by many that full exercise of the powers of sovereignty implies full ability to meet the responsibilities of sovereignty, among which is adequate protection for vested legal rights of other states. The data papers presented by each of the interested groups furnished an abundance of evidence on the nature, origin, and significance of the legal rights claimed by Japan, Russia, and other powers in Manchuria, but the conference did not constitute itself a court to decide which of these claims were valid. Certain members suggested that more fundamental than the determination of legal rights is the creation of a spirit of coöperation for the peaceful development of Manchuria.

With the successful conclusion of this third conference, the Institute of Pacific Relations has ceased to be an experiment and has become an institution. It undoubtedly fills a need arising from the growing contacts of the diverse cultures of the Pacific. But while it has become an institution, the scope and method of its activity will doubtless undergo continuous modification. The Institute's effort has been to serve as an accurate source of information and a sounding board of the opinion on public questions held by influential groups in the Pacific region. To do this, its members must be free from direct governmental responsibility and its meetings free from government censorship. But without governmental responsibility there is danger that the members will not be responsible at all—that their remarks will be based neither on the considered opinions of important groups nor on scholarly investigation of the pertinent facts. To obtain influence without official authority, and to merit influence without official responsibility, is a task of unusual difficulty, and its devotion to this task differentiates

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the Institute of Pacific Relations, both from official bodies like the League of Nations and from purely scientific bodies like the Institut de Droit International, though it has some of the characteristics of each. Successful accomplishment of this task requires that its personnel include technical experts as well as representatives of group opinions, that its interests include problems formulated for scientific investigation as well as problems formulated for the expression of public opinion and political action, and that its procedure assure the mutual interaction of expert investigations and representative opinions. The procedure is as yet by no means perfect; but the techniques of conference, of information, and of research which are being evolved by experience to meet the Institute's peculiar aim should be of unusual interest to political scientists, particularly to students of international organization.

QUINCY WRIGHT.

University of Chicago.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

By vote of the Executive Council, the twenty-sixth annual meeting of the American Political Science Association will be held at Cleveland, Ohio, probably on December 29-31. It is expected that the Association's headquarters will be at the Hollenden Hotel. The following committees have been appointed: (1) Program Committee, William Anderson, *chairman,* Robert E. Cushman, C. G. Haines, Clyde L. King, F. A. Middlebush, Raymond Moley, and Walter R. Sharp; (2) Committee on Nominations, Arthur N. Holcombe, *chairman,* Walter J. Shepard, Raymond G. Gettell, Ellen D. Ellis, and Jacob Van Ek; (3) Committee on Local Arrangements, Mayo Fesler, *chairman,* Earl W. Crecraft, with other persons to be added. The American Economic Association, the American Sociological Society, and various related organizations will meet at Cleveland on approximately the same dates.

Professor Charles E. Merriam, of the University of Chicago, is engaged abroad during the spring and summer in connection with activities of the Spelman Foundation.

Professor Leonard D. White has resigned as executive secretary of the Local Community Research Committee at the University of Chicago, and has been succeeded by Professor Donald Slesinger, formerly secretary of the Yale Institute of Human Relations.

Professor Arthur N. Holcombe, of Harvard University, will offer courses in government at the University of Michigan during the coming summer session, and Professor J. R. Hayden, of the latter institution, will teach in the Harvard summer school.

Professor Lloyd M. Short, of the University of Missouri, has been given leave of absence for the academic year 1930-31 to conduct studies in national administration, with residence in Washington, D.C.

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Professor N. P. Spykman, of Yale University, has been awarded a Guggenheim fellowship for the study of Asiatic nationalism viewed as a political expression of the cultural transformation due to the penetration of Euro-American culture in areas of different culture.

Professor Edgar S. Furniss, chairman of the department of economics, sociology, and government at Yale University, will become dean of the graduate school on July 1.

Dean A. C. Hanford, of Harvard College, has been promoted to a full professorship of government.

Professor James Hart, of the Johns Hopkins University, will teach in both sessions of the summer quarter at the University of Virginia.

Professor Frank G. Bates, of Indiana University, took office on January 1 as police commissioner of Bloomington, Indiana, for a term of four years.

Professor William S. Carpenter has been advanced to a full professorship at Princeton University.

Professor Joseph P. Harris, of the University of Wisconsin, will teach at the University of Chicago during the second half of the summer quarter.

Professor James W. Garner, of the University of Illinois, will offer courses on international law, and Professor E. D. Graper, of the University of Pittsburgh, courses on English government, during the coming summer session at Columbia University.

Professor Francis W. Coker, of Yale University, will conduct courses in the field of political theory in the coming summer session at Ohio State University.

Mr. Harold W. Stoke, who received his doctor's degree at the Johns Hopkins University in February, has accepted an instructorship in political science at the University of Nebraska. Mr. Charles J. Rohr, a candidate for the doctorate in June, has been appointed instructor at Trinity College.

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Dr. Frederic L. Schuman has returned to the University of Chicago after nine months spent in Paris carrying on a study of control of French foreign relations. Mr. Sterling D. Takeuchi has also returned from Tokyo, where he has been conducting a similar study of Japanese foreign relations.

Dr. John G. Heinberg, now engaged in research in France as a Social Science Research Council fellow, will return to the University of Missouri in September, and has been promoted to an associate professorship.

Professor C. M. Kneier has resigned at the University of Nebraska to accept a position in the political science department at the University of Illinois.

Mr. William L. Bradshaw, formerly instructor in political science and public law at the University of Missouri, and at present completing his work for the doctorate at the University of Iowa, returns to the University of Missouri in September as assistant professor of political science and public law. He will teach principally in the fields of political parties and local rural government.

Professor W. W. Willoughby, of the Johns Hopkins University, has lately been awarded the Lin Tse-Hsu Memorial Medal, which is conferred by the Chinese government upon persons who have rendered distinguished service in preventing the use of opium. The Macmillan Company will soon publish Professor Willoughby's *The Ethical Basis of Political Authority.*

Technical advisers to the American delegation at the conference for the codification of international law, convened at The Hague on March 13, included Professors Jesse S. Reeves, of the University of Michigan, Edwin M. Borchard, of Yale University, and Manley O. Hudson, of the Harvard Law School.

Dr. Joseph S. Roucek, professor of political science in Centenary Junior College, Hackettstown, N.J., will visit Rumania during the coming summer in connection with the preparation of a volume on Rumanian government and politics. He will also deliver a series of

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lectures at the Prague Summer School on the international relations of Czechoslovakia.

The National Institute of Public Administration has recently undertaken surveys as follows: (1) the government of Maine, for Governor W. T. Gardiner; (2) the government of Arkansas, for Governor Harvey Parnell; and (3) the government of the city of Williamsburg, Va., for the mayor and council.

The first volume of the *Index and Digest of State Legislation,* prepared by the Legislative Reference Division of the Library of Congress, and covering the years 1925-26, has been published and may be obtained from the Superintendent of Documents for $1.50 (cloth bound edition).

The Iowa Political Science Association, the Iowa Association of Economists and Sociologists, and the Iowa Association of Historians met in joint session at the State University of Iowa on May 16-17.

The Dodge Lectures on the Responsibilities of Citizenship were delivered at Yale University in April by Professor Felix Frankfurter, of the Harvard Law School, and dealt with the general subject of Public Administration and the Public.

The Fourth International Congress of the Administrative Sciences will be held at Madrid, October 21-27. Further information may be had from Professor Leonard D. White, of the University of Chicago.

The third annual session of the Institute of Citizenship was held at Emory University, Atlanta, Georgia, April 7-12. The program consisted of general lectures and round table conferences. A leading participant was Professor James W. Garner, of the University of Illinois.

The twenty-fourth annual meeting of the American Society of International Law was held in Washington, April 23-26. Among principal subjects under discussion were the contributions of the Permanent Court of International Justice to the development of international law; neutrality and neutral rights following the Pact of Paris for Renunciation of War; possible restatement of the law concerning the conduct of war at sea; and extraterritoriality and foreign concessions

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in China. The opening address was delivered by Dr. James Brown Scott, the new president of the Society.

Under the auspices of the department of politics, a conference on politics was held at Princeton University on March 19-22. General addresses were made at open meetings by Dr. Alfred Zimmern, Mr. Frank R. Kent, Mr. William Hard, and others, and round tables on the administration of criminal justice were conducted by Dr. W. F. Willoughby and Professors William E. Mikell and Raymond Moley.

The first Yale Conference on International Relations, held at New Haven on March 28-29, dealt with the subject of Anglo-American relations. It was attended by about forty persons invited to represent the business world, the teaching world, and the press. Leading participants included Lord Eustace Percy, Mr. Walter Lippman, and Professors Edwin F. Gay and Charles K. Webster.

The compilation of a *Bibliographical Directory of American Scholars* in the field of the humanistic and social sciences, similar to the *Bibliographical Directory of American Men of Science*, has been undertaken under the editorship of Dr. J. McK. Cattell. Resolutions endorsing this project have been passed by the American Council of Learned Societies and the American Association of University Professors.

The fifth annual session of a seminary devoted to a coöperative study of Mexican life and culture will be held under the auspices of the Committee on Cultural Relations with Latin America, in Mexico City, July 5-25. Among round tables and leaders are the following: Problems of the Caribbean, Professor Chester Lloyd Jones, University of Wisconsin; Social Forces in Mexico, Professor John A. Lapp, Marquette University; Mexico and its International Relations, Professor J. F. Rippy, Duke University; and Problems of Government in Latin America, Dr. Ernest Gruening, editor of the *Portland Evening News*. Further information may be obtained from Mr. Hubert C. Herring, executive director, 112 East 19th Street, New York City.

The Facsimile Text Society, which has been sponsored by members of various learned societies, proposes to reproduce texts in five series,

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one of which will be devoted to economics and political science. Photostats are now being prepared. The Society hopes to secure additional members. The annual dues are five dollars. Information may be obtained from the executive officer, Professor F. A. Patterson, Columbia University, New York City.

The American Library in Paris has recently issued Part I of *Official Publications of European Governments*. This is an outline bibliography of serials and important monographs, including diplomatic documents, issued by European offices and ministries. Part I covers the publications of Albania, Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Estonia, Finland, and France.

It is announced that the index issue for the first volume of *Social Science Abstracts* will be published and distributed before the end of May. This index will contain the following sections: (1) a table of contents accumulated for the year; (2) an alphabetical authors' list, with about 12,000 entries; and (3) a subject index arranged alphabetically and, in a considerable degree, analytically. The whole index will contain from 30,000 to 40,000 entries. It is strongly desired that teachers of political science in various colleges and universities inform their students concerning the value and modes of use of *Social Science Abstracts*. The journal is subsidized for only a limited period, and it is hoped that, within this time, it can be made largely self-supporting.

An Institute of Justice held at the University of Chattanooga at the end of April dealt with the entire subject of the administration of justice and its social and economic backgrounds. Among speakers and round table leaders were two members of the national commission on law observance and enforcement, Messrs. George W. Wickersham and Frank J. Loesch; also Professors Charles A. Ellwood, of the University of Missouri, and Walton H. Hamilton, of the Yale Law School, and Dean William L. Mikell, of the University of Pennsylvania Law School.

The University of Minnesota announces a four-day conference, July 15-18, on problems of governmental relationships and areas of administration. The subjects, one for each day, will be confined to health and welfare, law enforcement and safety, taxation and finance, and

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public utilities. The occasion will permit invited specialists, representing federal, state, and local governments, to consider the interplay of relationships in these particular fields of public administration. While most of the guest speakers will come from other states, emphasis will be placed upon the application of the respective problems to the state of Minnesota. The conference method will provide for a series of open meetings and forums, supplemented by round table sessions with discussion limited to invited guests. Arrangements are in charge of Professor M. B. Lambie.

According to a preliminary announcement issued by the State University of Iowa, the Seventh Commonwealth Conference will be held at Iowa City on June 30 and July 1-2. The theme of the Conference will be "The Political Issues of 1930." According to the announcement, the program will consist of round table discussions and of addresses by prominent thinkers, writers, and men of affairs. Among the topics to be discussed at the round tables and in the addresses are listed the following: law enforcement, judicial administration, control of utilities, tax reform, the press and politics, the Philippines, the lobby, prosperity and unemployment, a flexible tariff, "lame duck" sessions, radio regulation, immigration, recognition of Russia, disarmament, money and elections, control of communications, intervention in Haiti, the world court, Pan-American arbitration, and administrative reorganization. Professor B. F. Shambaugh is chairman of the Conference, and Professor Kirk H. Porter of the committee on program.

The tenth session of the Institute of Politics will be held at Williamstown, Massachusetts, July 31 to August 28. There will be three lecture courses: (1) France and the Disarmament Problem, Dr. Paul Mantoux, of Paris; (2) The Freedom of the Seas, Lord Eustace Percy, of London; and (3) The Evolution of International Public Law in Europe since Grotius, Dr. Walter Simons, of Berlin. There will be lectures also by Professor C. Delisle Burns and Lord Meston, both of London. Round table conferences are planned as follows: (1) The Far Eastern Situation, Professor George H. Blakeslee, of Clark University; (2) An Analysis of Western Civilization, Professor C. Delisle Burns, of the University of London; (3) Recent Economic Progress in Europe, Professor Edwin F. Gay, of Harvard University;

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(4) Limitation of Armaments, Admiral A. J. Hepburn, of the United States Navy; (5) Pan-American Problems, Professor Jesse S. Reeves, University of Michigan; and (6) The Political Aspects of Aërial Navigation, Mr. Edward P. Warner, New York City. Other special groups will deal with the problems of sovereignty in the Arctic and Antarctic regions, intervention by the United States in the Caribbean area, the independence movement in India, and the communist experiment in Russia.

A newly established School of Public and International Affairs at Princeton University will offer instruction both in undergraduate and graduate years. At the beginning, attention will be given mainly to the undergraduate program in order to develop a body of well-trained undergraduates, some of whom will form a nucleus of graduate students in the School. The primary purpose is to train men who expect to enter public life or public administration, whether national, state, or municipal, or to engage in international business and affairs, as well as those who contemplate careers in journalism or law. The curriculum is designed also for others who have not determined upon their future careers, but who desire to acquire knowledge which will enable them better to appreciate the world of affairs. The object of the School is neither vocational nor professional. The aim will be to give students a broad and fundamental knowledge of the various fields of public and international affairs. The program involves a coördination of existing courses in the departments of politics, history, economics and social institutions, and modern languages. Certain new courses are also to be added. Visiting lecturers, men of practical experience in public affairs, will supplement the curriculum with lectures and round table discussions and with individual conferences with students engaged in the study of a particular subject. Facilities are to be provided for students to engage, during the sophomore and junior vacations, and at the close of the senior year, in supervised study, at approved foreign universities, of the peoples, traditions, and institutions of different countries. In order to utilize these periods to the full, the students are to be placed in homes where only the foreign language is spoken, so that they may secure a practical working knowledge of the language of the country which they are visiting. The University will grant, upon graduation, a special certificate, in addition to the customary bachelor's diploma, to those

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who have successfully met the School's requirements. The School is to be directed by an administrative committee consisting of the president of the University, the dean of the graduate school, the chairmen of the four coördinating departments, Mr. DeWitt Clinton Poole (until recently counsellor of the United States embassy in Berlin), and Professor Harold W. Dodds as chairman. Individual members of the University's board of trustees have underwritten the expenses of the School for the first three years. Meanwhile, effort will be made to raise a minimum endowment of two million dollars.

The Hochschule für Politik: A Significant German Institution for the Teaching of Political Science. The German Institute for Political Science was founded in 1920, largely through the efforts of Dr. Ernst Jäckh. The fruition of his endeavors was made possible because of earlier suggestions by prominent Germans, and by the collaboration of several leading citizens of the Reich. During the war, Friedrich Naumann attempted to create a school devoted to instruction in politics. Dr. Becker, *Kultusminister,* also emphasized the necessity of an institute for politics. During his official incumbency in 1917, State Secretary Dr. von Kühlmann prepared a monograph on the subject of the need for a university for politics. Other suggestions were made during the decade.

The adoption of the Weimar constitution strongly emphasized the need for the creation of an educational institution commanding the respect and support of all parties, guided by experienced leaders, and giving coördinated instruction in the political, civic, and social problems facing the new republic. The instruction and training needed were both national and international.

Proceeding with a clear vision of what he was trying to do, Dr. Jäckh was successful in enlisting the support of leading German citizens and government officials. The institution which he visualized became a reality; and he became, and remains, its administrative head. In addition to a board of directors (the *Kuratorium*), there is a board of trustees, numbering some fifteen, presided over by Dr. Simons. A special group of persons called the *Kollegium* was also created to decide certain educational policies and questions.

The aim of the *Hochschule* is to offer scientific training in the art of government, including national and international problems. Speak-

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ing broadly, this means training in those fields which are most closely related to actual government, such as political science, economics, diplomacy, and geography. Emphasis is placed upon practical training, which is secured by a close contact with men who are actually engaged in the work of government, diplomacy, finance, and economics.

That the *Hochschule* is regarded highly by the public authorities is indicated by the fact that an annual grant is made to it by the government of the Reich. The Prussian government, furthermore, has furnished the necessary quarters for the institution's work. With particular reference to the international work, the Laura Spelman Rockefeller Foundation has granted a substantial amount, on the understanding that certain contributions will be forthcoming in Germany. Mr. William P. Ahnelt, of New York City, has endowed a chair for Anglo-Saxon problems, and the Carnegie Endowment for International Peace, on proposal of President Butler, supports a chair which will be filled each year by a foreign or by a German professor.

The *Hochschule* works in close coöperation with certain other institutions or endeavors with which it is in sympathy. For example, it has coöperated with the Geneva School of International Studies and the Geneva *Institut Universitaire des Hautes Études Internationales.* Close contact is maintained with the International Institute of Intellectual Coöperation at Paris. Dr. Jäckh has lectured extensively in the United States, and mutual benefits have been derived from collaboration with the Institute of International Education in New York.

In the field of education in national affairs, considerable attention is given to the new constitution and to governmental administration under it. Extension lectures are provided in various cities of the Reich at certain periods of the year. Considerable attention is given to the press, the facilities of the institution being at the service of editors and younger newspaper men who desire to avail themselves of its advantages. The *Hochschule's* leaders have devoted much thought to courses leading to foreign service in the consular and diplomatic fields, and many young men have taken advantage of this training.

Library needs are met in part by a working collection of over 9,000 volumes, which includes the books most frequently consulted by the students. The existence of several good libraries in Berlin makes it unnecessary for the school to attempt to duplicate them. In fact, an exchange plan exists with these libraries by virtue of which *Hochschule* students make use of books according to their particular needs.

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An effort is being made, however, to build up a special political science collection in the library.

The library publishes a monthly information bulletin. The *Zeitschrift für Politik* contains reports on the work of the *Hochschule,* scientific articles relating to the work of the institution, and current book reviews. A publication entitled *Politische Bildung* has also appeared—an interesting volume containing the addresses delivered on the occasion of the opening of the school and other material relating to political education.

In 1928, the registration was approximately 1,030 during the winter term; in the summer, 860 students were in attendance. Several hundred more attended single lectures; and the "youth group" numbered around 250. The student body is composed of representatives of various callings—officials of the Reich, bankers, editors, employees, trade unionists, writers, and technical workers. Nationals from the following countries were enrolled: Egypt, United States, Bulgaria, Great Britain, Finland, Greece, Holland, Italy, Japan, Yugoslavia, Latvia, Lithuania, Norway, Palestine, Persia, Poland, Rumania, Russia, Sweden, Czechoslovakia, Hungary, and Ukrainia.

Among the lecturers at the school appear the names of conspicuous German leaders. The names of the late Drs. Rathenau and Preuss appear on the list of earlier lecturers. These two outstanding statesmen have left behind a lasting influence upon the *Hochschule* because of their respective achievements in the field of constructive political science. In fact they may be regarded as personifying, in many respects, the aims of the school—the former being noted particularly for his work in international affairs, the latter for his part in framing the new constitution. The list of lecturers includes the names of Rosen, Schiffer, Scholz, Stegerwald, Simons, Schacht, Hirsch, Müller, and others.

The *Hochschule* endeavors to bring in from other countries the most effective lecturers available. Already it has been successful in this respect. In March, 1928, M. Albert Thomas, director of the International Labor Organization at Geneva, spoke to a large audience on the subject, "My German Experience; the History of a French Friend of Germany, 1898-1928." In the same month, Dr. William E. Rappard, rector of the University of Geneva and a member of the Permanent Mandates Commission of the League of Nations, spoke on the subject, "The Origin of Colonial Mandate Principles and the Practical

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Experience in the Field of their Application." In April, 1928, Dr. Ernest R. Curtius, of Heidelberg, spoke on "The French Cultural Conceptions and the Intellectual Situation of the Present." In May, 1928, Professor André Siegfried, of Paris, delivered two lectures on "The Working of the French Constitution and Government."

Visiting lecturers for the academic year 1928-29 included the following: Professor Thaddeus Zielinski, of Warsaw, on "The International Elements of our Culture;" Dr. Alfred Weber, of Heidelberg, on "Possibilities and Limitations of European Thought;" Senator Francesco Ruffini, of Turin, on "International Unions and the League of Nations;" and Professor G. P. Gooch, of London, on "The Foreign Policy of Sir Edward Grey."

The first occupant of the Carnegie chair (1927) was Professor James T. Shotwell, of Columbia University. The publicity given to Professor Shotwell's lectures and his stress upon the point of renouncing war as an instrument of national policy undoubtedly served to pave the way for the Kellogg-Briand pact for the renunciation of war.

The writer was fortunate enough to hear the orations of several of the best young public speakers of Germany who in the summer of 1928 engaged in a national contest. The orations related to the new constitution, the prize being a trip to the United States of America. The final hearing occurred in the main auditorium of the *Hochschule*. Great interest was manifested by the press and by the public.

The *Hochschule für Politik* is one of the most significant post-war institutions of Germany and of Europe. It is an interesting experiment in national and international education. To Dr. Ernst Jäckh, a man of broad and understanding vision, special tribute should be paid. Political scientists will follow with interest and profit the work being done by him and his associates in post-war Germany.

J. Eugene Harley.

University of Southern California.

[1] The information contained herein is based upon visits to the *Hochschule*, personal conversations with Dr. Jäckh, and official publications of the *Hochschule*, notably the annual Berichte and a publication of 1926 entitled *Deutsche Hochschule für Politik: Aufbau und Arbeit.*

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD

Harvard University

From the Physical to the Social Sciences. By JACQUES RUEFF. (Baltimore: The Johns Hopkins Press. 1929. Pp. xxxiv, 159.)

The Statistical Method in Economics and Political Science. By P. SARGANT FLORENCE. (New York: Harcourt, Brace and Company, 1929. Pp. xxiv, 521.)

Both of these books are important for students of the general methodology of the social sciences. The second is of especial significance for political scientists. Rueff's book has been available in the original French edition for a number of years, but has been practically unknown in America. That it should now be translated and published by the Johns Hopkins University Institute for the Study of Law is in itself a significant commentary upon changing legal emphasis. An extended introduction by Herman Oliphant and Abram Hewitt contains a particularly lucid exposition of problems of method in the field of law, and of three approaches which they term the transcendental, the inductive, and the practical. The book by Florence was first announced by the publishers some five years ago, and its balance and maturity testify to the value of the ripening process.

In excessively simple language, Rueff sets forth an interpretation of the nature of science, in accordance with which he finds that the social sciences have all the essential characteristics of the so-called "natural" sciences. Each includes "an empirical branch which gathers appearances and expresses their common characteristics in the form of laws; and a rational branch which creates their causes. These causes . . . . are a system of initial propositions, axioms, and definitions capable of serving as premises to reasoning whose conclusions coincide with the laws empirically discovered." The "empirical" laws are thus Pearsonian in character, i.e., shorthand descriptions of sequences of events. The term "rational" is used in much the sense that psychologists employ the term "rationalization." Thus whenever the empirical laws change, whether in the physical world or the

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social world, there must be a reformulation of the initial propositions, axioms, or definitions from which the corresponding rational science derives the "causes" of the changing empirical phenomena. In such a case the earlier rational laws are still "true," but they may no longer be applicable. Thus, to illustrate from economic science, "if it is the law of supply and demand that expresses the common character of exchange in France, it evidently does not follow that it will be the same in Russia." But if Russia should revert to a western form of capitalism, the laws of supply and demand would still be "true" after the interim.

It would be easy to find an exposition of Rueff's viewpoint toward science in the book by Florence. However, the reviewer will not attempt to expound the former's position further, but will rather set forth his own view of the significance of Florence's work for the future development of political science. In a presidential address before the American Economic Association some years ago, Professor Wesley C. Mitchell called attention to the changes wrought in the science of economics by the introduction of statistical methods. Statistical methodology was first employed as a means of testing propositions developed by the older school of economic theorists. The result, however, was not so much the proof or disproof of the older theories as it was the development and introduction into economic science of totally new problems susceptible of proof by statistical means. The older problems were not settled, but were forgotten.

The effect of Florence's book will, in my opinion, be similar. When political science takes for its subject-matter a metaphysical entity known as the state, and discusses its internal and external relationships, either in the abstract or in the particular, there is little room for the employment of statistical methodology. A discussion of the constitutional division of powers between the states and the federal government, for example, presents little opportunity for a statistical form of statement. When government is regarded empirically and functionally rather than metaphysically, the door to statistics has at least been pried open. Florence has intruded a shoe still further by conceiving of politics as a type of social relationship, an exploration of which will inevitably be of statistical character. Moreover, he has proceeded to an itemization or framework which now remains for the political statistician to fill in. In this respect, among others, his work represents a definite advance in comparison with work which

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has been published during recent years by the reviewer. The latter has carried on his work without reference to such a detailed conceptual framework as that which Florence now provides. It is nevertheless interesting to the reviewer that several of his own inquiries have been fitted into the frame which Florence sets up. The author has, in short, attempted "to provide for statistical politics the analytic framework, and the apparatus of thought, that economic theory . . . . already provides for statistical economics" (p. 355).

The author regards division of labor in social research as a necessary evil, and he takes pains at the outset to delimit the fields of the political and economic sciences (pp. 14 and *passim*). Differentiation is produced by two cross-cutting criteria. He distinguishes first between two sanctions of human behavior: that of *compulsion* (which is, in general, political in character) and that of *voluntary exchange* (which is economic). Again, attention may be directed to the *terms* (rates and quantities involved), which are economic in character, or to the *organization* (which is political). When behavior is based upon the sanction of voluntary exchange, and when it deals with the terms involved, the subject-matter may be regarded as that of pure economics. When the sanction of compulsion appertains to questions of organization, the subject-matter is that of politics proper. But the sanction of compulsion, when it deals with rates and quantities, gives us political economics; i.e., "what are the penalties by which observance of laws is compelled and why?" This is administrative science. Similarly, the sanction of voluntary exchange, when it involves questions of organization, gives us economic politics, or much of what is known as business science. The author's discussion of statistical politics, in terms of the differentiation just noted, deals chiefly with politics proper and economic politics, i.e., with the two branches in which organization is a major criterion. This seems to align Mr. Florence with George E. G. Catlin in regarding acts as "political" without reference to the field of human organization to which they may be applied.

Space will not permit detailed discussion of the way in which these concepts are worked out. All the "acts or behavior of men toward men, their mutual interrelations and reciprocal contacts, the orders, punishments, votes, verdicts, appointments, dismissals passing transitively from men to men, and the meetings and discussions between men, that form part of their relations of ruling, manning, and sharing

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of work" (p. 364) constitute data with which statistical politics must deal. Nor can space be taken to refer to the author's exposition of statistics in the field of economics. This occupies a larger portion of the book than does the space devoted to politics. It is of lesser importance only because economics has already traveled far in its statistical development.

The book is a model of documentation and cross-referencing, but it is in no sense a textbook or manual of statistics. A statistical glossary contains many of the elementals of statistical method which are needed for an understanding of the context. The table of contents is at the same time an abstract. A final chapter is made up of a table of cross-references by means of which topics which are logically related, but discussed at different parts of the text, are brought together. The exposition is clear and precise, and so effectively illustrated as to provide delight for even a non-statistically minded reader.

STUART A. RICE.

University of Pennsylvania.

The Range of Social Theory; A Survey of the Development, Literature, Tendencies, and Fundamental Problems of the Social Sciences. By FLOYD N. HOUSE. (New York: Henry Holt and Company. 1929. Pp. x, 587.)

An Introduction to Social Research. By HOWARD W. ODUM and KATHERINE JOCHER. (New York: Henry Holt and Company. 1929. Pp. xiv, 488.)

The Art of Straight Thinking; A Primer of Scientific Method for Social Inquiry. By EDWIN LEAVITT CLARKE. (New York: D. Appleton and Company. 1929. Pp. xi, 470.)

Social Psychology; The Psychology of Political Domination. By CARL MURCHISON. (Worcester, Massachusetts: Clark University Press. 1929. Pp. x, 210.)

Individuality and Social Restraint. By GEORGE ROSS WELLS. (New York: D. Appleton and Company. 1929. Pp. vii, 248.)

Essentials of Civilization; A Study in Social Values. By THOMAS JESSE JONES. (New York: Henry Holt and Company. 1929. Pp. xxvii, 267.)

Professor House, of the University of Virginia, has prepared a compendium of recent social science literature which is calculated to

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show the wide range of interest of those who try to explain the life of man. The last twenty-five pages undertake to sketch the trends; the first five hundred and forty pages organize the material under current analytical captions. The three major divisions are geography and social differentiation, human nature and collective behavior, and conflict and social control. The chapters in the third section are the most closely related to political science, bearing such titles as "Economic Interpretation of War," "Public Opinion and Legislation," and "The Geography of Politics." The specialist will find these chapters rather thin, and will glean much more from those further removed from his specialty.

A scholarly one-man encyclopaedia of this kind almost eludes criticism, since the problem is the highly personal one of exclusion. The chapter on the geography of politics ought certainly to have included the work of the "geo-political" school in Germany and some of the English literature on administrative areas. The brief section on political parties mentions much that is inferior to Holcombe and Siegfried, to say nothing of the German literature. The chapters on trends and methodology are squeezed into narrow compass, and lack incisiveness of organization and argument.

The volume by Odum and Jocher also hails from the South. Professor Odum, who now directs the Institute for Research in Social Science at the University of North Carolina, is particularly able as a promoter of research. He is editing the American Social Science Series in which his own book, that of House, and of Jones appear. The *Introduction to Social Research* grew out of the pedagogical necessity of training efficient research assistants. Its strength lies in its catholicity. Representative work in every recognized field of social research is mentioned by title or summarized as to method and substance, and stress is continually laid upon the interrelationship to be discerned among the several disciplines.

Certain "approaches" are singled out for separate treatment: the philosophical, the general analogical, the biological, the psychological, the anthropological, the politico-juristic, the economic, the sociological. Some "methods" are assigned a chapter: the case, the survey, the experimental, the statistical, the scientific-human. Several "types of procedure" are dealt with, including the selection of personnel and the problem of analyzing, interpreting, and presenting results. The chapters are very sensible, though often skating on the thin ice of the

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trivial. The general description of existing research agencies is conveniently accessible in no other book.

No doubt such a course as Professor Clarke gives to undergraduates in sociology at Oberlin would be a useful corrective to the habit of thinking by title which the preceding books are likely to encourage. Clarke's style is fresh and lively. Philosophy sometimes dons the cap and bells, makes wise-cracks, tells jokes, and chortles over propaganda-howlers. It must be a pleasure to think straight at Oberlin.

No political scientist can fail to wonder what Professor Murchison believes about the future of political psychology. Murchison is head of the laboratories at Clark University, and he begins his book by declaring that psychology is "poverty-stricken" in the field of social psychology "and has escaped a death notice chiefly because no one has called in the coroner." He has written a polemical essay to say that the true social psychological problem is the study of individual differences for the sake of discovering who is going to dominate society. He deplores the effort to write a social psychology of war or slavery or any other social pattern, because these are ephemeral; the fact of dominance is ever-present. The educational psychologists, who are principally concerned with problems of measurement and the analysis of distributions, are the psychologists who have something valid to offer.

The essay squanders much of its potential influence by its ambiguity. Political life, we are told, "embraces, without exception, every phase of human experience or behavior. There are no concepts or forms of habit, no actions or relations of one individual to another, which do not enter into and become an essential part of the political life of the community." In effect, we are asked to adopt the word political as a synonym for social without a discussion of the procedure by which sub-discriminations are to be made. If dominance means the control of other people's motives, much of our behavior is not the outcome of conscious domination, and if we introduce a concept of the unconscious, it requires definition and not assumption.

The notion of a trait is left vague. Murchison writes that "political domination is so obvious a phenomenon in every walk of daily life and on every page of history that it must have a biological and psychological basis." It is not clear whether traits are like ears, in the sense that they are stable phenomena throughout life, and that they can be identified during infancy, or whether traits are unstable con-

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stellations capable of organization and reorganization in the life situations of infancy, childhood, youth, and adulthood. If the latter be the truth, particular ways of acting toward growing individuals (culture patterns) become co-variables with "general intelligence" and "general biological character." We may, therefore, study the rise and spread of these patterns with as much justification as we can study individual traits. Murchison's strictures on the "fugitive" character of social patterns apply likewise to "traits," and if we are to refrain from studying objects of change, we are presumably to cease studying both.

A much better case can be made out for Murchison's point of view than he actually writes. I think that we should resist our impulse to call the coroner until we give somebody else a chance to do it. A few illustrative instances of the supposed value of the method for which he argues would help to expose the advantages and limitations of the point of view.

Mr. Wells has written a popular exposition of social psychology from a diluted behavioristic standpoint. Mr. Jones has published a new volume of essays in social philosophy which seems to add nothing to his earlier excursion in this domain.

HAROLD D. LASSWELL.

University of Chicago.

Machiavel. By ORESTES FERRARA. Traduit par Francis de Miomandre (Paris: Librarie Ancienne Honoré Champion. 1928. Pp. viii, 370.)

The Private Correspondence of Nicolo Machiavelli. By ORESTES FERRARA. (Baltimore: The Johns Hopkins Press. 1929. Pp. xii, 130.)

Few political writers have been so frequently and fully discussed as Machiavelli; and although the commentaries agree in drawing attention to the characteristic clarity and directness of Machiavelli's style, few political works have been the objects of such widely varied appraisals as the *Prince* and the *Discourses on Livy*. The critics agree that Machiavelli wrote clearly, yet disagree as to just what he meant to say. Before the nineteenth century, the discussions of Machiavelli were chiefly by way of attack or defense. For over a century now, his ideas have been considered more scientifically; but there is still no consensus in the explanation of them. The manifold interpretations

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have been recapitulated several times—notably by Robert von Mohl in 1858 *(Die Machiavelli Literatur),* and by Pasquale Villari and O. Tomassini in their critical biographies (in 1878 and 1883). In those works, in the studies by Macaulay, Ranke, Gervinus, Feuerlein, Nitti, and others, and in briefer essays, such as John Morley's brilliant Romanes lecture in 1897, the reader can find about every conceivable point of view. There was a quarter-century of relative silence, until the political changes and experiments after the World War revived active interest in Machiavelli's notions of concentrated, iron-handed government.

The newer systematic studies have been made chiefly by Germans and Italians. The most penetrating and compendious among them is the work of Dr. Orestes Ferrara. A native of Naples, M. Ferrara moved in his youth to Cuba, took part in the Cuban war of independence, became a citizen of that country, and has participated actively in its intellectual and political life. He is professor of public law in the University of Havana, has represented Cuba in the League of Nations and in the Pan-American Union, and is the present ambassador of Cuba to the United States.

Of the two books in hand, the first is an excellent French translation of M. Ferrara's manuscript in Spanish (published later in the same year—*Maquiavelo,* La Habana, 1928). The author gives a detailed description of Machiavelli's training, his varied, if not highly important, service in governmental missions, and his writings—historical, political, and dramatic. He presents a highly independent, even though at most points not new, estimate of Machiavelli's political ideas. He pictures Machiavelli, not as a representative of the corruption of his age and country or of the distinctive genius of the Italian race, but as an exemplar of a realism that flourished briefly in Italy in the sixteenth century—in contrast to the mysticism and religionism of the Middle Ages and to the moralism and abstractionism that dominated European political writing from the middle of the sixteenth century to the nineteenth century.

Machiavelli's method of argument was to view things "as they are"—to put aside questions of right and wrong, as do natural scientists or rational political economists in solving problems in their fields of study. He ejected from politics the Christian standards of humility, mercy, and justice, and admitted only reason of state as the justification for political means. The evils that rulers are intended to

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cure are disorder and disunity; the remedies for them are to be found only in the qualities of strength, courage, resolution, and, when necessary, craftiness and cruelty. All this, in M. Ferrara's opinion, does not imply that Machiavelli was immoral or unmoral in his political vision; it implies rather that the moral attribute upon which he set greatest store was that of devotion to the common weal. The supreme test of virtue is to be found in that which is useful to society. The Machiavellian doctrine, under this interpretation, is not that the power of the state is an end in itself; it is rather that the common welfare of the political community is such an end. Fraud and violence can be justified where necessary to the maintenance of the independence and power of a state, because of the most essential contribution which a strong state makes to the good of the community. This is not a subordination of morality to political expediency, but a subordination of political policy to the sublime ideal of an independent, stable, unified community.

There is no doubt of the thoroughly scientific temper and method of M. Ferrara. He has made an objective, if sympathetic, study of Machiavelli. It may be that in two respects he has been too generous to his subject or too one-sided in his view of political "realism." In the first place, most of Machiavelli's discussion in the *Prince* discloses no conception of a goal other than that of the strong-armed state governed by a callous and unscrupulous ruler; the vision of a farther goal of a popular welfare served by that despotism does not appear, except vaguely in an abruptly added peroration. In the second place, M. Ferrara's appraisal does not raise the question as to whether a political doctrine, even of the sixteenth century, can be regarded as completely realistic if it considers men only as political beings and implies that their patriotism and public devotion can be inspired and maintained, their welfare cultivated, by a government which deals with them chiefly through intimidation and resorts readily and without scruple to perfidy and cruelty.

In *The Private Correspondence of Nicolo Machiavelli* we have a side of the man not fully recorded in the standard works. M. Ferrara, from editions of Machiavelli's correspondence, presents, not for the most part the letters or lengthy excerpts from them, but a delineation of the sort of man the letters reveal. Machiavelli is shown as husband, father, friend—affectionate, frank, humorous, somewhat irreverent, easy in his private morals. He is shown also as government official

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and interested citizen—informed and public-spirited, shrewd and practical. The little volume not only gives us a vivid and entertaining picture of Machiavelli's "human" side; it also clarifies our conception of his general outlook on politics.

FRANCIS W. COKER.

Yale University.

The Defensor Pacis of Marsilius of Padua. Edited by C. W. PREVITÉ-ORTON. (Cambridge, England: University Press. 1928. Pp. xlvii, 517.)

At last we may say that we have an adequate critical edition of the *Defensor Pacis.* Apart from Cartellieri's reprint of Book I from the first edition and the much abridged text of Scholz in the Teubner series based only on the earlier printed editions, students of the history of political thought have hitherto had to depend upon the rare and uncritical version in Goldast's *Monarchia* for their knowledge of the most important political writing of the fourteenth century and one of the most important of the whole Middle Ages. There is no one interested in medieval thought or institutions but must feel under a heavy debt to Mr. Previté-Orton for this admirable edition based on the manuscripts.

It is, of course, impossible without a comparison with the Mss. themselves to make an adequate estimate of the thoroughness of the editor's work, but judged by every test that one can apply short of such a comparison, this edition seems in every way to meet all the needs of the most exacting scholarship.

A good illustration of the practical value of an accurate critical edition like this appears in the text of Book I, chapter 12, one of the most important chapters in the whole book. There the author declared the "legislator," or first and proper effective cause of law in a state, to be the people, or collective whole of the citizens, or else *eius valentiorem partem.* Some interpreters have seen in this phrase *pars valentior* an announcement of the principle of majority rule and have placed its author among the moderns. They have found one reason for doing so in the author's explanatory statement closely following: *valentiorem inquam partem considerata quantitate in communitate illa super quam lex fertur.* So it is in the first printed edition of 1522, in Goldast, and in Scholz's abridged version. But Mr. Previté-Orton's text shows that this passage is corrupt, and thus utterly refutes the important infer-

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ence that has been drawn from it. In no less than eight of the Mss., including the best of them, it reads: *valentiorem inquam partem considerata quantitate personarum et qualitate in communitate illa super quam lex fertur.* No one with this passage before him in its correct form could possible interpret it any longer as meaning a numerical majority. The author of the *Defensor,* instead of anticipating the modern political practice, seems here more like the mouth-piece of Aristotle.

The text of the *Defensor* is preceded by an introduction—all too short—of forty-two pages, in which the editor gives a brief account of the work of its author or authors. It is here that a reviewer might be tempted to question some of the editor's conclusions. His profound knowledge of the medieval Italian communes has enabled him to draw some interesting parallels between their institutions and the statements in the *Defensor,* but this very knowledge may perhaps have led him to press these parallels too far in some cases. Thus, for example, he speaks of "the Italianate legislator" of the *Defensor* and compares it to the law-making assemblies of the communes. In this he seems to underrate the importance of the author's repeated assertions that he is simply following Aristotle. The term "legislator" itself comes from the thirteenth-century Latin version of Aristotle's *Politics* made by William of Maerbeka, on which the author undoubtedly depended, and it is a translation of Aristotle's νομο-Θέτης. This is scarcely the "legislature" of modern times, or even that of the Italian cities. In the fourteenth century, there was no clear conception of a sharp separation of powers such as this seems to imply, nor, above all, was there the definite modern distinction between the constituent and the legislative function. The assembly this author has in mind seems more a constituent body than a legislative one; its functions are more those of a Solon or of the Athenian *Nomothetæ* than of a British Parliament or Italian *consiglio.* The political ideas are scarcely those of modern England, or even of medieval Padua, Verona, or Milan. They may, however, be medieval, and they are certainly Aristotelian.

This apparent over-emphasis on the Italian influence has somewhat affected the editor's views concerning the disputed question of the authorship of the *Defensor.* He admits that John of Jandun shared equally with Marsiglio of Padua in the favor of the Emperor and the censure of the Pope which resulted from the publication of this book, but he sees so many references to Italy in *Dictio I* that he cannot at-

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tribute its authorship to anyone but the Italian Marsiglio, and thus is led to reduce the collaboration of John to very small proportions. If, however, it should turn out that some of these "Italianate" institutions and ideas were to be found, even though in less mature form, in France as well as Italy in the fourteenth century, there would be less objection to the view that this Book I of the *Defensor,* with its constant references to Aristotle and a very peculiar Latinity influenced by William of Maerbeka, is more likely to have come in the first place from the pen of John of Jandun, the well-known commentator on Aristotle, than from Marsiglio, who elsewhere shows no very special knowledge of Aristotle's works. To the reviewer, internal evidence seems to point to the probability that Marsiglio, though he may later have revised and arranged the treatise as a whole, was actual author only of *Dictio Secunda,* or Book II, and of a short introduction at the beginning of Book I; while practically all the remainder of Book I—with the possible exception of its concluding chapter, as suggested by Miss Tooley, in *Transactions of the Royal Historical Society,* Fourth Series, Volume IX—was originally the work of John of Jandun. The authorship of *Dictio Tertia* seems somewhat more uncertain—probably Marsiglio's—but is of little consequence.

C. H. McIlwain.

Harvard University.

Until Philosophers Are Kings; A Study of the Political Theory of Plato and Aristotle in Relation to the Modern State. By Roger Chance. With a Foreword by H. J. Laski (London: University of London Press. 1928. Pp. xiii, 293).

The task of measuring the actual achievements of the political community by referring to an ideal of the perfect state has been one of the interesting phases of post-war writing in political science. Plato's *Republic* and Aristotle's *Politics* have seemed more contemporary to some thinkers than official documents from Moscow or the metaphysics of the corporate state of Mussolini. To these writers it has seemed true "that the virtue of the good man is necessarily the same as the virtue of the citizen of the perfect state," and, "in the same manner, and by the same means through which a man becomes truly good, he will frame a state which will be truly good." A new citizenship today has seemed to create loyalties which an old order could not command. Professor Laski suggests this is his foreword by saying that "Mr. Chance has

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sought to discover in the faith of Plato and Aristotle the secret which still makes them, for all students of politics, the most living of our masters."

Mr. Chance makes his point of view plain. He quotes with approval A. E. Russell in *The Interpreters:* "Politics is a profane science only because it has not discovered it has roots in sacred or spiritual things and must deal with them;" and he adds that the reader who does not hold this view must consult Machiavelli for his polity. The book was written because the author is convinced of the importance of the better comprehension of the ideas of Plato and Aristotle for the solution of modern and social problems, and because he feels the necessity of casting these ideas before a wider circle of readers. Most must see that "politics can only serve humanity if regarded *sub specie aeternitatis.*" It may or may not be practical politics to attempt to enlighten the popular mind, but Mr. Chance is certain that the practical artificer and administrator of empires has heretofore always confused ends with means and plunged civilization into chaos by ignoring the search of the artist and philosopher for beauty and for truth. Again and again throughout this vivid and fresh survey of the thought of the Greek masters, politics is seen more in the study of the human motives behind the state than in the mechanism through which the state operates. These two philosophers of the ancient city-state never rode in a high-powered car or through the air, but students today do not find them dull critics of either the domestic or international policy of the most powerful nation on earth. They would not be awed by Moscow or Rome or by the prosperity of the United States. The mechanics of modern democracies might not be so confusing to these Greeks as some of the experts would have us think.

There is vigor and insight in the chapters dealing with the teachings of Plato and Aristotle, and their value is increased by the insistence of Mr. Chance that what they have to say is apt today in the solution of social and political problems. He has not merely again gone over the ground covered by Barker and Zimmern, but has looked at the modern democratic community, primarily England, in the light of the ideals of the ancient republic. This is his contribution. He believes that the most characteristic feature of the social philosophy of Plato and Aristotle is their insistent teaching that political science must be based on moral philosophy as a means to the end, and, though it would be wrong to extend the sphere of politics as widely as they do, their

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point of view is surely one which should receive more attention than it does in modern practice. "The state exists as an instrument to further the common well-being of the community—a well-being which can only be properly expressed in personal terms, and on this account we say the basis of the state is ethical and personal."

The final chapter, "The Modern State," is a stimulating discussion of the political power of the community as it is realized in the modern state. This is related to the freedom of the individual, the aims of the state in a complex industrial system attempting to work out the ideal of equality and social justice, and to establish a sane international order. The optimism of the old individualism is as dead as mutton. But Mr. Chance does not retreat into an equally moribund collectivism. He happily sees an England "drunk with delights of collectivism," depending more upon the individual and in the organization of national life by voluntary, self-directing groups. Democracy has repudiated its old hopes because they are out-worn. The future is not confused by the resounding chatter about the failure of what is a pseudo-democracy. The failures have been taken as part of the game, and the indictment is not as keen as the skepticism which was calmly defined several thousand years ago. There is an imagination about the future of democracy which Mr. Chance would not dismiss; a direction of political power toward the good of the community as a whole, and the proportionate division of political power among those qualified to exercise it, may yet dominate popular government. "Democracy, as popularly understood today, deserves all that Plato and Aristotle said of it as a method of government; understood in a rational sense, it can still represent the political idealism of the human race."

This is a refreshing book, and it could be used effectively in courses in political theory. It could be read with profit by anyone who is interested in the motives which are behind the governments of men.

CHARLES W. PIPKIN.

Louisiana State University.

Der Patriotismus. Prolegomena zu seiner soziologischen Analyse. By ROBERT MICHELS. (München und Leipzig: Verlag von Duncker & Humblot. 1929. Pp. viii; 269.)

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Der Kampf zwischen Tschechen und Deutschen. By Dr. Emanuel Rádl. (Reichenberg: Verlag Gebrüder Stiepel. 1928. Pp. iv; 208.)

The book by Mr. Michels, who is now professor of political economy in the University of Perugia, is brilliant, many-sided, and interesting, but it will be somewhat surprising to a reader who is seeking for an analysis of patriotism, in the modern sense, as the love and attachment of citizens to their national state. Though Professor Michels treats this aspect of the problem too, his chief concern is to describe and analyze all the various shades and hues of feeling and thought which are more or less intimately connected with modern patriotism. The lack of closer definitions and distinctions is sometimes embarrassing, but the author can ably refute such a charge by the very title of his book. Regarding the work from this point of view, it is really thrilling and illuminating, because there is nothing bookish or pedantic in it; the author, on the contrary, has gathered an amazing bunch of wild and sometimes exotic flowers connected with the emotion of patriotism. His source material is extremely rich and variegated. He utilizes history, newspaper articles, novels, poems, songs, private conversations, and anecdotes in order to find out the subtle and mysterious flavor of the love and attachment of the individual to his surroundings. Sometimes in a short anecdote we feel the pulsation of patriotism, and sometimes its pathology, clearer than in many systematic treatises.

Mr. Michels is always interesting and piquant in the analysis of the most varying aspects of the problem, though seldom thoroughgoing and exhaustive. His book is more a kaleidoscopic survey than a photograph of patriotism. The feeling of nostalgia, the longing for the native woman or for native food, the love of the native village, the *Campanilismo,* the relation of love for the home to love for the country, the antagonism between the city and the village, the "sociology of the foreign," the significance of the *Sanspatrie,* the psychology of the traveller, the sociology of the political refugee, the emigration because of patriotism, and other nuances of the same melody of patriotism are sometimes very skilfully analyzed. A large and rich part of the book is devoted to the discussion of national songs, in which the author shows great discrimination in the field of music. On the other hand, at times important problems are scarcely touched or are incompletely analyzed. For instance, when he treats of the dramatic issue of the assimilation of foreign nationalities, he remains quite vague, and one

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wonders why he, a close observer of facts, does not report one of the most characteristic and brutal episodes of our times in this field, the persecution of the German minority in southern Tyrol.

Just the opposite is the character of Professor Rádl's book. He devotes his book exclusively to one chapter of modern nationalism, i.e., the struggle between Czechs and Germans. This concentration makes his work a highly specialized study which will less attract the general reader, but which can be regarded as an important contribution to the history and sociology of a fight that was one of the chief factors in the dissolution of the Austro-Hungarian monarchy. Professor Rádl, himself a Czech and a professor in the Czech University of Prague, demonstrates with great vigor that Czech nationalism, in its ideological conception, was based by its founders, Palaćký and his followers, on a romantic misrepresentation of historical facts; that neither the missionary work of the apostles of the Slavs, Kyrill and Method, nor the beginnings of Hussitism, nor the decree of Kuttenberg and other classic "documents" of Czech nationalism can be regarded as real manifestations of modern nationalism, but were the outcome of religious, social, or dynastic struggles. Czech nationalism originated far later, certainly not earlier than the end of the eighteenth century.

However, the most important part of Professor Rádl's book is not historical, but an acute analysis of Czech nationalism after the war, and a severe criticism of the nationality policy of the newly created state toward its national minorities, especially the Germans. The discussions and arguments of Mr. Rádl on this point belong among the best and most solid which have been written concerning the nationality problem of our time. He shows admirably that this vexed controversy cannot be settled on the basis of the old philosophy of the nation-state, and that only a new conception of the denationalization of the state and of the collective rights of nationalities as cultural organizations under the guarantee of the state can establish a harmonious coöperation among them. From the point of view of both theoretical and practical political science, we must receive the contribution of Professor Rádl with grateful acknowledgment.

OSCAR JÁSZI.

Oberlin College.

The History of Government. By SIR CHARLES PETRIE. (London: Methuen and Company. 1929. Pp. x, 243.)[1]

[1] An American edition of this book has been published by Little, Brown and Co. (Boston) under the title, *The Story of Government* (1929, pp. 329).

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This book is a sketch, easily readable and yet thought-provoking, of certain types of governmental form, as found in all ages and climes. Polity in practice is the theme; theory is not involved except incidentally. The author is widely read in the literature of political history, ancient and modern. In his exposition he revels in the succinct, suggestive phrase that boldly summarizes an epoch or an institution, without embarrassing qualifications.

The central point of interest is democracy versus dictatorship. After brief chapters on the city state, the Roman Empire, the Middle Ages, and benevolent despotism, nearly two-thirds of the book is occupied by a survey of the century and a half since the storming of the Bastille. European democracy is surveyed in its "rise," its "apogee," and its "decline," with special attention to Britain, France, Spain, Italy, and Germany. The democratic experience of Switzerland and the Scandinavian countries is ignored.

One chapter is devoted to America, one-half of it to the area south of the Rio Grande, where "lies in all probability the secret of the future of the human race." Regarding the United States, one is interested to read that "traditions belong to the future rather than to the past;" that the Irish "for many years controlled the politics of the country of their adoption;" that the "President of the United States is an elected Lord Protector;" that sovereignty resides "in the Constitution itself, and in the interpretation that the courts of law may put upon it;" that "with the growth of population the Constitution is becoming increasingly more difficult to amend, and that [this] is admittedly a highly unsatisfactory state of affairs;" that our political stability is due to state's rights, and "it is difficult to praise too highly the good sense of the American people in setting its face so sternly against centralization."

Regarding government in Europe, the general idea in the background is that democracy is proving "incapable of coping with the problems of this post-war age." The ultimate doctrinal basis of the movement toward authority is not found in Nietzsche, Comte, or Hegel, but in the French Catholic and nationalist writers such as Maurras, who is regarded as "probably the greatest intellect in France today." The press is found to be, on the whole, "on the side of authority," a far cry from the situation of 1830, when the Paris revolution was made by journalists. The year 1914 proved that democracy and peace are not synonymous. The war exigency strengthened authority, cur-

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tailing personal liberty, as do also the post-war tendencies of a more and more complicated social structure. Without adducing evidence, the author asserts that "there can be no doubt that the various dictators have saved their countries from communism." On a similar basis stands the allegation that "all over the world there is among the middle class a steady falling off of interest in politics . . . . and that sport is one of the chief causes of this decline is undeniable." But, most important of all, in the economic strife between capital and labor, free parliaments are found impotent to solve administrative and social problems. Dictators are called in or admitted for the purpose of saving society from anarchy, for preserving social liberty, though it be at the cost of political. But the temporariness of dictatorships is appreciated; "in spite of the firmness of a dictator's rule and of the prosperity which he always brings to the country which he governs, there is a latent feeling of uncertainty." "All human government rests in the last resort upon force, but the dictatorship more so than most." Is not this the precariousness as well as the inhumanity of tyranny?

HENRY RUSSELL SPENCER.

Ohio State University.

Characters and Events: Popular Essays in Social and Political Philosophy. By JOHN DEWEY. Edited by Joseph Ratner. (New York: Henry Holt and Company. 1929. Two volumes. Pp. v-vii, 1-431, 435-855.)

This is a collection of articles written by Dr. Dewey at various times and published in various journals. Some indeed are reprinted here for the second time, having been collected and published (after their appearance in the *New Republic*) as one of the New Republic series. It is well worth while republishing them all; it enables the student of modern American thought to have available in convenient form some of Dr. Dewey's most important writings to supplement the series of lectures published a year or so ago under the title, *The Public and its Problems.* The present volume, indeed, is indispensable both for an understanding of the author's approach to political questions and as a wise and penetrating contribution to political theory by one who has thought much concerning American experience. It supplies, with the collected papers, a substantial answer to those who fail to

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find any significant writings on political theory coming from this country.

The collected papers fall into five sections. The first contains character sketches and appraisals of educators, poets, and men of "public affairs," e.g., Kant, Arnold, Wells, Emerson, William James, Justice Holmes, and Roosevelt. It is followed by a section on "events and meanings"—notes of travel and observation in Japan, China, Russia, Turkey, and Mexico. These are exceedingly interesting. In the first place, it is worth noting that Dr. Dewey has a genius for studying states that are at present in process of rapid cultural change with consequent political upheaval. Again, he is not content with a record of turmoil, but persists in a search for the more meaningful aspects of events and institutions incident to these changes. Naturally related to these papers is the third section on America, with swift and literally occasional reflections on American culture as revealed in events and persons. These selections lead to the fourth section on war and peace —papers that satisfy one less, perhaps, than any of the others, yet reveal a sensitive person trying with great courage and intellectual honesty to extract every possible gain from the tragic events of the war and the post-war period for the benefit of the society entangled in the day-to-day struggles and toils of the time. The final section— "Towards Democracy"—contains many discussions of the method and present situation of the social studies. They are valuable to the political scientist for technical and professional reasons, quite apart from their more general worth.

Perhaps the following quotation (p. 500) represents with rough justice the clue to these selections, widely gathered yet with a dominant theme: "To transmute a society built on an industry which is not yet humanized into a society which wields its knowledge and industrial power in behalf of a democratic culture requires the courage of an inspired imagination. I am one of those who think that the only test and justification of any form of political and economic society is its contribution to art and science—to what may roundly be called culture. That America has not yet so justified itself is too obvious for even lament. The explanation that the physical conquest of a continent had first to be completed is an inversion. To settle a continent is to put it in order, and this is a work which comes after, not before, great intelligence and great art. The accomplishment of the justification is then hugely difficult. For it means nothing less than the dis-

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covery and application of a method of subduing and settling nature in the interests of a democracy, that is to say, the masses who shall form a community of directed thought and emotion in spite of being the masses. That this has not yet been effected goes without saying. It has never even been attempted before. Hence the puny irrelevancy that measures our strivings with yard-sticks handed down from class cultures of the past.''

The teacher of politics should introduce his students to many of these essays. For himself, they may be put beside his letters of William James, to be pondered over at leisure. He will not be able to review them briefly, or quickly. But they will become some part of his stock of ideas.

JOHN M. GAUS.

University of Wisconsin.

Thomas Jefferson: The Apostle of Americanism. By GILBERT CHINARD. (Boston: Little, Brown and Company. 1929. Pp. xx, 548.)

For a good many years Professor Chinard, of Johns Hopkins University, has been preparing for the writing of this book. He has edited several important volumes of source material, notably the *Commonplace Book;* he has written four volumes dealing in whole or in part with Jefferson's relations with French thought and French thinkers; and he has read reams of unpublished Jefferson manuscripts. The resulting book is an excellent study of the mind of the great Virginian. It is not merely an exposition and analysis of Jefferson's ideas; it is also a biography, and a good one. The biographical element is, however, somewhat subordinated to the philosophical. One can find in the book a fairly complete account of Jefferson's life, and especially of his political career, but there are several other works which tell that story in greater detail. No other book presents so nearly complete and satisfactory an account of Jefferson's political and social thought.

As one might expect, the author is at his best when dealing with Jefferson's debt to French theories. He has made abundantly clear what should have been made clear long ago, that Jefferson borrowed very little indeed from the French thinkers. In doing so he has, among other things, shown that Jefferson, at least after 1800, was not so Physiocratic as has commonly been supposed.

If the author writes with a sure touch when French thought is involved, he is not always so happy in dealing with the English origins

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of Jefferson's ideas or with contemporary American thought. A more detailed acquaintance with the English and American backgrounds would have prevented him from over-emphasizing the originality and importance of the hitherto unpublished manuscript given on pages 80-82. Certainly it does not warrant the clear implication that Jefferson borrowed from Lord Kames, rather than "from any of the eloquent and famous thinkers of France and England," the "main principles of his philosophy" (p. 85). Nor is there adequate proof of the startling statement that Jeffersonian democracy "was born under the sign of Hengist and Horsa," that, in other words, it is Anglo-Saxon in origin (p. 87; cf. p. xiii). Jefferson's remarks on the subject are hardly to be taken very seriously except as indicating his ignorance of early English government. The author's claim that the letter to Gerry in 1799 contains the first complete definition of government and of Americanism (p. 352) seems singularly weak. After all, Jefferson's is not the only brand of Americanism that has flourished in this country. Nor, for that matter, does this letter contain any very remarkable or complete version of Jefferson's ideas; in the *Notes on Virginia* one finds him setting forth highly important theories which are not here repeated. The brief but excellent comment on John Adams (p. 323), a thinker to whom biographers of Jefferson rarely do justice, does much to make up for these shortcomings.

A few errors should be corrected in the next edition. Paine's *Common Sense* appeared six months too late to influence Jefferson in the summer of 1775 (p. 60). The first printed edition of the *Notes on Virginia* was in 1784, not 1787 (p. 118). It is misleading to say that the Kentucky Resolutions were "followed by much milder representations from other state legislatures," since, with the exception of Virginia, all of the states which took action on the subject opposed the Kentucky doctrine (p. 349).

B. F WRIGHT, JR.

Harvard University.

The Labor Injunction. BY FELIX FRANKFURTER AND NATHAN GREENE. (New York: The Macmillan Company. 1930. Pp. 343.)

In 1924 there appeared a volume by John P. Frey under the same title as the book under review. Frey's book, with an introduction by Samuel Gompers, was avowedly a study of the injunction from the

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point of view of labor. As such, it was a contribution of merit and value. But this book left unanswered questions concerning the history of the injunction, its operation in practice, the uses which it serves, the abuses to which it has given rise, legislative efforts to curb the use of injunction in labor controversies, and, finally, whether or not the labor injunction represents a desirable social policy. The volume by Frankfurter and Greene is devoted to a consideration of these questions.

The task of the authors was greatly lightened by the work of others in this field. A few monographs and many articles had already appeared dealing with various phases of the problem. What was needed was an impartial, authoritative, and systematic treatment of the whole subject. This need is satisfied in a very creditable manner by the study under review. The book falls into five chapters: "Allowable Area of Economic Conflict;" "Procedure and Proof Underlying Labor Injunctions;" "Scope of Labor Injunctions and their Enforcement;" "Legislation Affecting Labor Injunctions;" and "Conclusions." Chapters I and IV embody material that is largely available elsewhere; Chapters II and III bring to light many new and, in some instances, rather alarming facts.

The extent of the use of injunctions in labor disputes, although generally understood to be widespread, is by no means fully appreciated. This is due to the fact that the majority of injunctions issued are not reported. "Of fifteen injunctions issued during the Pullman strike in 1894, ten were never reported" (p. 50). This is only one of many illustrations of the wide discrepancy that exists between the courts' doings and a record of the courts' doings. Pages 53-81, which deal with procedure and proof underlying injunctions, go to the very root of the injunction evil. "Of the one hundred and eighteen cases reported in the federal courts during the last twenty-seven years, not less than seventy *ex parte* restraining orders were granted without notice to the defendants or opportunity to be heard. In but twelve of these instances was the bill of complaint accompanied by supporting affidavits; in the remaining fifty-eight cases, the court's interdict issued upon the mere submission of a bill expressing conventional formulas, frequently even without verification. Of the fifty-eight restraining orders so granted, twelve seem never to have come on for further hearing—even the very inadequate hearing incidental to the proceeding for a temporary injunction" (p. 64).

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Two methods have been followed by legislative bodies in their efforts to correct the abuses of the injunction: changes have been made in the substantive law; other measures were designed to correct procedural evils. Legislation under the first head has usually proved futile. The Supreme Court found that the Clayton Act made no radical changes in the substantive law. In Massachusetts and Arizona, legislation narrowing the scope of equitable jurisdiction in labor disputes was declared unconstitutional. The Arizona statute is the only one of this nature which has been passed upon by the Supreme Court. Since Chief Justice Taft based his decision largely on the equal protection of the laws clause, the authors conclude (p. 220)—rather too confidently, so it would seem to the reviewer—that a similar federal enactment would weather the test of constitutionality. "It is hardly to be assumed that the application given in Truax v. Corrigan to the equal protection clause of the Fourteenth Amendment will be imposed upon the due process clause of the Fifth Amendment." As a matter of fact, Mr. Taft himself, discussing in 1914 the constitutionality of a congressional proposal to exclude trade-unions and farmers from the operation of the anti-trust act, said: "It would be a question whether the Supreme Court might not find in the first eight amendments of the Constitution a prohibition upon congressional legislation having similar unjust operation" (i.e., denial of equal protection of the laws). Moreover, a recent comparative study of the Court's interpretation of the due process clauses of the Fifth and Fourteenth Amendments shows that, although the scope of the due process clauses is usually construed as identical, the Court concedes to the nation a slightly wider range of action, at the expense of individual and property rights, than it allows to the states.

Legislation, both federal and state, affecting substantive law and equity jurisdiction has been found after judicial interpretation to be declaratory of the existing law (as was true of the Clayton Act and several state enactments), and therefore of little benefit to labor, or, in case any substantial change was made in the substantive law or equity jurisdiction (as was true in the Massachusetts and Arizona statutes), the legislation has been found wanting on grounds of constitutionality. Even the procedural requirements which federal and state courts of equity are henceforth bound by statute to follow have not, in the opinion of the authors, been "systematically adjusted to modern needs." The one notable change which this legislation has made affect-

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ing the labor injunction "is the protection of jury trial in contempt proceedings that involve accusations of crime" (p. 198).

"The injunction is America's distinctive contribution in application to industrial strife" (p. 53). Heretofore it has been almost exclusively a legal instrument in the hands of the employer. In two instances, however, the government appealed to a court of equity for relief against the unlawful conduct of laborers. The first complaint was filed by the United States attorney in the Pullman strike of 1894, and the second was filed in the railway shopmen's strike of 1922. It was the government's action and the court's decision in the Debs case that gave currency to the famous phrase "government by injunction." More recently, trade unions have themselves appealed to equity courts for protection against employers. Only four scant pages (108-112) of the present volume are given to this subject, whereas the subject-matter involved would seem to warrant an entire chapter. The instances in which unions have invoked the injunction are not, as the authors say (p. 108), "few and sporadic." A recent study shows that during the period 1892-1929 unions or their representatives appealed for injunctive relief no less than seventy-two times.

The book concludes with a detailed consideration of the Shipstead Anti-Injunction Bill now pending before Congress. This measure the authors regard as "the most considered legislative effort that has yet come before Congress attempting to grapple with the difficulties of intervention by law in the controversies of industry . . . . and should be translated into law" (pp. 226-27).

The volume includes nine appendices that are both pertinent and instructive; also an alphabetical table of cases and an adequate index. The excellent and voluminous footnotes are a notable feature. This fact makes all the more glaring the absence in Chapter IV of any reference to Spelling and Lewis' very excellent analysis of the labor clauses of the Clayton Act.

ALPHEUS T. MASON.

Princeton University.

American Influences on Canadian Government. By WILLIAM BENNETT MUNRO. (New York: Macmillan Company. 1929. Pp. iii, 153.)

This interesting little book comprises three lectures delivered at the University of Toronto in 1929 under the Marfleet Foundation. "In the government and politics of Canada," concludes Professor Munro,

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"most of what is superimposed is British; but most of what works its way in from the bottom is American." This thesis is supported by a wealth of detail on each of the three subjects treated—the constitution, party politics, and municipal government. Federalism in Canada was designed in the light of American experience and aimed at creating a strong central government, among other means by reserving to the dominion the residual power in all but purely provincial matters. Judicial interpretation has given Canadian federalism an American cast by virtually transferring the residual power to the provinces. Though the Canadian constitution has no bill of rights, the federal power to disallow provincial legislation has tended to effect the same end, in the matter of provincial legislation at least. Canadian parties, though labelled with English names, are essentially American in organization, in relying on the spoils of office for their sustenance, and in their internal divisions due to sectional cleavages. The frontier, the paramount force in American politics in the nineteenth century, dominates Canada in the twentieth. Municipal institutions, though English in origin, have tended to become American in form, adopting such practices as division of administrative responsibility, taxation of owners rather than occupiers of real property, and direct legislation.

Though some of Professor Munro's illustrations of his thesis may seem a little far-fetched, there is a wholesome breath of iconoclasm as regards both Canadian and American institutions. The thoughtful reader will perhaps wish that the author had gone further below the surface to discuss how far the Americanization of Canadian institutions is the result of imitation and how far of similarity of economic and other conditions. But it is perhaps too much to expect a work of political theory in a course of lectures obviously intended for the layman rather than exclusively for the specialist.

ROBERT A. MACKAY.

Dalhousie University.

American Government. By CALEB PERRY PATTERSON. (New York: D. C. Heath and Company. 1929. Pp. xlv, 888.)

Professor Patterson has written a comprehensive book on American government. Here between the covers of a single volume one finds a discussion of all phases of our government, together with an introductory chapter on "theories of the state." What it lacks in originality is compensated for by the breadth of the field covered. The

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major divisions are those of the traditional textbook (national-state-local), and the treatment is formalistic rather than functional. Although Professor Patterson has studiously avoided taking sides on controversial questions, there are brief excursions from time to time into the political and social implications of the various problems presented.

"Facts," says the author, "have been subordinated to principles and tendencies and opinion has been expressed to give form and direction to detail and to provoke thought and discussion." Upon reading the book, however, the net impression is that facts have been emphasized at the expense of principle and that few opinions have been expressed. There are, of course, certain exceptions. For instance on page 131 we find: "Personal liberty includes the right to labor at any trade, to follow any business, and to make contracts. No individual can be restrained by any person, combination, or the government in the exercise of his faculties in any manner whatsoever." One is compelled to put this down as opinion, for it is certainly not fact. It would be easy to name a considerable list of trades and occupations which the individual is not at liberty to pursue. Furthermore, constitutional guarantees of individual liberty do not extend to interference with personal rights by other individuals and groups unless such interference takes place under the authority of a legislative act. As the Supreme Court declared in the Civil Rights Cases, "the wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of the individual. . . . ."

In a book which the author says lays emphasis on principles and tendencies, it is to be regretted that so little attention is given to the problems arising under the prohibition laws, the virtual nullification of the Fourteenth and Fifteenth Amendments in the South, the use of injunctions in labor disputes, judicial review, and the regulation of public utilities. Each of these topics receives only the most cursory treatment.

However, one cannot put everything into a single volume. Professor Patterson's book will fill a real need for those who seek a textbook giving the history and structure of our political institutions. The book should prove especially helpful to teachers in institutions with inadequate library facilities. For those who prefer a critical discussion of fundamental problems in American government, the present

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book is less satisfactory than Beard's *American Government and Politics,* or even McBain's little volume on *The Living Constitution.*

PETER H. ODEGARD.

Williams College.

Urban Democracy. By CHESTER C. MAXEY. (New York: D. C. Heath and Company. 1929. Pp. iv, 408.)

American City Government and Administration. By AUSTIN F. MACDONALD. (New York: Thomas Y. Crowell Company. 1929. Pp. xv, 762.)

Of the making of textbooks there is no end—certainly not in the field of municipal government. The reader consequently is apt to approach each new venture in critical and inhospitable temper, for with appetite satiated new viands are less alluring. Added to this is the suspicion that publisher competition rather than the author's sense of contribution is the compelling motivation.

Happily, this disposition is largely dissolved by the time one has perused the first six chapters of Professor Maxey's book. There is room for the entire treatment, if only to make these early surveys available and to give them setting. The sections on municipal relations with the state and on organization and function, though well done, are not the marked contribution to the student that these earlier chapters are, particularly in their introduction to modern municipal life. The descriptive portions of the book do not sustain the high level of achievement indicated in its beginning, but are not wanting in merit. A serious attempt is made throughout to relate the life process in urban communities with the governmental forms and procedures through which it passes. The author is to be congratulated on sensing the need for such treatment and on his attempt to supply it.

Another praiseworthy undertaking in the book is the effort to integrate European and Latin American municipal experience with the treatment of American urban institutions. Limitations of objective and space seem to impair the kind of comparative survey so essential to convey a lasting impression of foreign achievements. The student fails to sense the *ethos* of which urban life abroad is one of the expressions, and thus is unable to grasp the basic contrasts with American municipal life which are reflected in municipal organization and administration. On the other hand, the chapters dealing with the services

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and functions of American municipal administration are illuminating in their more adequate revelation of the life forces which call forth municipal control, direction, and integration. The author's closing chapter is on a par with his opening ones, admirably defines the nature of urban problems today, and invites the sort of mind-stretching so essential to their solution.

Professor MacDonald's book is a more pretentious undertaking. It follows conventional lines, on the theory that "a textbook is not the place to make radical experiments"—a convenient rationalization for making it safe and saleable. Within the limits of a single volume, the entire range of municipal government and organization are surveyed. The treatment is singularly lucid. The author displays unusual facility in the power of weaving illustrative material into the text without obscuring the points under discussion. The result is to bring together in measurable compass a great deal of valuable and stimulating information. The options that are available in organization and administration are indicated in terms of specific performance. The life situations out of which these experiences emerge is largely left for the sophistication or imagination of the student to provide, but the descriptive material is abundant and pertinent.

A valuable innovation is the chapter on "The Theory of City Government." In it are integrated the fundamental ideas which have governed municipal organizations, the movement toward its reform, and an attempt to formulate the political philosophy underlying sound municipal organization and administration. Briefly, the doctrines of concentration of authority under responsible auspices, the simplification of structure within the limits of electoral understanding, and the recognition of confidence in public officials as the basis of achievement are set forth as the foundation of good government.

The vitality of the work is demonstrated in the chapters dealing with utility regulation and municipal ownership. Each is a vivid and forceful presentation of the respective policies under review and of the purposes toward which they are directed. Yet one misses something of that sweep of apprehension which brings into bold relief the conflict between the property *mores* of a simpler, individualistic society and the collectivist tendencies generated in modern urban life.

Both of these books are well implemented for the benefit of teachers and students who wish such aids to their work. The citation of im-

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portant periodical literature is a feature of Professor MacDonald's reference lists.

RUSSELL M. STORY.

Pomona College.

Federal Limitations Upon Municipal Ordinance-Making Power. By HARVEY WALKER. (Columbus: Ohio State University Press. 1929. Pp. viii, 207.)

In his introduction the author states that two sets of facts should be made available for every municipal ordinance draftsman. One of these is a statement of the law of his own state affecting ordinance-making, and the other a summary of the constitutional rules laid down by the United States Supreme Court and applicable in every state. The author is attempting to provide the "facts of the second type." The result is a short but worthwhile summary of the decisions of the Supreme Court which have shown the limitations upon municipal ordinance-making. But few "facts" are found and fewer "rules" laid down. This is not the fault of the author, as it is attempting the impossible to digest the constitutional limitations upon ordinance-making and present them as rules or as facts.

The book is divided into five chapters. In the first one, municipal corporations in general are discussed, and the remaining chapters take up the fate of many ordinances when they are considered by our court of last resort. By giving in brief the facts of most of the cases and then the decision, an interesting insight into the field of constitutional limitations is afforded. The effect of the commerce clause, the contract clause, and the Fourteenth Amendment is shown in a skillful way, and the result should prove of value to the man who frames municipal ordinances or to the lawyer who does not own the ponderous works on municipal corporations by Dillon and McQuillin.

From the review of the cases as presented in this book it is found that the limitations upon the exercise of municipal control over commerce do not bear harshly upon the cities, although some attempts to pass ordinances for the benefit of local merchants are prevented by the Supreme Court. It is found that "municipalities frequently feel that they have made bad bargains and seek to avoid them by passing an ordinance to alter the terms of the contract or to repeal it." The cases which involve ordinances under the contract clause of the Constitution show that the Supreme Court has little sympathy with these

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proposals. As to ordinances which involve the Fourteenth Amendment, the cases clearly show that the strict attitude of the Court is changing to a liberal view of the police-power needs of the large cities. There seems to be no "ground for a fear that the Court will tend to make the due process clause an excuse for federal meddling in state or local affairs."

The book should be read by all interested in municipal legislation, but it is doubtful, of course, whether it will have large appeal. Scholarly monographs published by university presses seldom reach those who may have most need for them. To the political scientist the book presents in terms concise and direct a host of cases defining by analogy the limits of municipal legislation.

The notes are full, but, except in a few cases, omit citations to the West Company's *Supreme Court Reports*. Generally these citations are of much value to the practicing lawyer. The citations given are not always uniform. Each chapter is followed by a summary, and some of the points in the summaries are more positive than they should be, due possibly to the desire to lay down rules. But the defects are trivial and do not begin to outweigh the merits of the volume. The title on the cover, "Municipal Ordinance-Making," is misleading, because the book has little to say about the making of ordinances, but attempts only to show the federal limitations upon ordinance-making.

NEWMAN F. BAKER.

Tulane University College of Law.

The Next Ten Years in British Social and Economic Policy. By G. D. H. COLE. (New York: The Macmillan Company. 1929. Pp. 459.)

Politics and the Land. By C. DAMPIER-WHETHAM. (London: Cambridge University Press. 1927. Pp. xii, 207.)

In the first of these books, Mr. G. D. H. Cole writes another lengthy chapter in his intellectual autobiography. The ardent guild socialist of the war and post-war period is now transformed into the cautious and tired liberal who has abandoned his former faith, and who, while still regarding himself as a socialist, believes that the "state must control policy but so far as possible avoid assuming the functions of administration."

The detailed and bulky program for which he argues is composed of the following main features: (1) The creation of a voluntary industrial

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corps from the unemployed, who would be given work on public improvements and whose work would be financed by the profits from other undertakings and from the public revenues. (2) The formation of a National Board of Investment operating as an investment trust which would receive savings from investors and make loans to finance given industries. There would also be state regulation of new capital issues and control over foreign investments. (3) The rationalization of industry should be encouraged, even to the extent of permitting limitation of output in industries where, because of inelastic demand, there is a considerable degree of over-production. (4) Works councils should be set up with power over engagements and dismissals similar to those enjoyed by the German works councils. This proposal is about all that remains of Mr. Cole's guild socialism. (5) The state should pay family allowances for the children of the workers—the cost of which will amount to approximately one hundred million pounds a year. (6) The socialization of credit by means of government control over the Bank of England. Cole here adopts J. M. Keynes' program for the issuance of credit which would stimulate production and set the idle to work, and he reproduces Keynes' arguments that this could be done without inflation or a rise in the price level. (7) A system of coöperative marketing and credit, on the model of Denmark, is advocated for dairy products, bacon, eggs, etc., with an attendant grading of products according to quality. (8) The food supply from overseas should be purchased in bulk by public agencies. (9) New and larger governmental units should be created for the development of publicly owned super-power, housing projects, etc. Localities should, moreover, be given greater powers for the municipalization of local utilities. (10) The school age should be raised to fifteen, and perhaps to sixteen, years. (11) The money to carry through the ambitious program of unemployment relief and family allowance could be obtained by cutting down the public debt through the use of a modified version of Rignano's plan for a progressive taxation of inheritances through time, the refunding of the debt at a lower rate of interest, and a reduction of fifty million pounds in the military and naval expenditures. (12) More or less independent commissions should be set up to help consolidate private industry. These commissions would use the threat of possible government purchase as a weapon with which to compel the private owners to consent to a more efficient organization of their industries.

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Mr. Dampier-Whetham's little book is a sharp attack on the land program of the Liberal party. He defends the landowning class against charges of inefficiency and lays the chief blame for the recent depression in agriculture to the fall in the general price level from 1920 to 1922 and to the deflation necessitated by the return to the gold standard. Since agricultural costs are generally incurred a considerable time in advance of the sale of the crops, this shrinkage in monetary values falls with special severity upon the former. The author's chief remedy is, therefore, the stabilization of the price level through international action.

PAUL H. DOUGLAS.

University of Chicago.

Italy. By LUIGI VILLARI. (New York: Charles Scribner's Sons. 1929. Pp. 391.)

Books written from an admittedly propagandist viewpoint may elicit one's sympathy if they contain some new information; but propagandist books written under the cloak of scholarship will arouse the ire of the most docile exponent of impartial history. In reading *Italy* one is incensed not only by the thought that here is a work of pure propaganda published in a supposedly scholarly series (the Modern World Series, published under the editorship of H. A. L. Fisher), but also by the knowledge that the editor selected as the author a man who has so many fixed prejudices that his entire work is colored by them.

The book discloses (1) an ardent Italian nationalism, (2) an intense admiration for Fascism, (3) a violent opposition to socialism, and (4) a careless, uncritical historical method. As illustrative of the first two points, let us consider Villari's fundamental thesis. He maintains in good traditionalist fashion that Italy's liberalism was borrowed from England, her radical democracy from France, and her socialism from Germany. On the other hand, he believes that Fascism is indigenous to the Italian peninsula, that it is Italian, and that it is good. This generalization, like most generalizations, is open to criticism. Does not Fascist syndicalism have its roots in the doctrines of Sorel? Does not the Fascist conception of the state have its racines in the philosophy of Hegel? And does not the idea of a national mission go back to the preaching of French Jacobins? As illustrative of point number two, it may be noted that Villari states that the capitalist system and private ownership of property are a necessary condition of progress and

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prosperity (p. 271). In the entire book he mentions the Fascist syndicalist Rossoni only once, and then in a most cursory fashion. And finally to illustrate the careless methods used in the book, one will find on page 329 the statement that ". . . . only a very small percentage of the inhabitants (of Alto Adige) are dissatisfied with Italian rule," supported by citing a series of fanciful and tendentious newspaper articles.

The Italian experiment is an interesting and important one. It is one with which the political scientist should be in close touch and which the layman should not ignore. It is the belief of the present reviewer that more harm than good is done Fascism by such books as *Italy*. The author should state the facts as impartially as he can and let the reader judge them for himself. From my personal experience in the matter, I believe that this method will secure the approval of the more far-seeing Fascists. At least it is the one that those posing as scholars should employ.

SHEPARD B. CLOUGH.

Columbia University.

Soviet Rule in Russia. By WALTER R. BATSELL. (New York: The Macmillan Company. 1929. Pp. ix, 857.)

The Soviet Union and Peace. With an introduction by Henri Barbusse. (New York: International Publishers. 1929. Pp. xiv, 280.)

New ground is broken by these two volumes on Russia—ground that is difficult to bring under intellectual cultivation, both because of the virgin character of the soil and of the lack, heretofore, of adequate facilities for mastering it.

Mr. Batsell, undertaking on the spot his survey of soviet institutions, came to his task with an eye to obtaining, out of the *mélange* of theory and practice in almost every phase of Russian political life, the objective reality derived from scientific observation and comprehensive documentation. The furrows turned by his plowshare are numerous, and have laid bare an unexpectedly rich store of raw material, which not only is accurately analyzed but is deliberately left open for the work of subsequent tillers. His volume is consciously "meant to serve as a foundation for studies of how Soviet Russia is ruled;" it notes that of the wide range of topics treated, all "call for detailed studies that have yet to be performed." Mr. Batsell has, however, himself brought

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large tracts into admirable cultivation. Nothing, throughout the volume, is done superficially. To get at origins requires deep plowing, and Mr. Batsell has done excellent work on the beginnings of the soviet constitutional structure (pp. 37-95).

Perhaps the most signal contribution of the volume is to be found in its treatment of "Bolshevik imperialism," i.e., the problem of nationalities (Chaps. III, V, X) both as an aspect of local administration and as a factor in the consummation of the Soviet Union. These chapters are accompanied by an exhaustive, accurate, painstaking documentation which makes available to English readers, in many instances for the first time, the constitutions and principal administrative ordinances governing the Soviet Union and its various component parts. For these indispensable sources we shall long be under obligation to Mr. Batsell.

Another feature of the work is the section—equally well documented—devoted to a descriptive and analytical account of the functioning of soviet institutions, viz., congresses of soviets, central executive committees, soviets of people's commissars, and local administration. There is often a glint of humor in the picturing of the origin of some particular practice, as in the anecdote of Lenin and Trotski regarding the institution of people's commissaries (p. 544). Finally, there is a treatment of the Communist party and the Third International. That the steamroller is an institution not wholly restricted to American political organization is recurrently noticeable! The appraisal of institutions is, happily, both statistical and human—the product of personal observation and of the use of authoritative sources.

Throughout the volume Mr. Batsell shows the long-range trend of forces in Russian history, sees in present soviet institutions the renewal of the centralizing tendencies of Czarist days, and believes that the creating of the one-class state in the Soviet Union must sooner or later clash violently with the spirit of nascent nationalism in the peoples whom Bolshevik propaganda aroused from a condition of lethargy. The soviet state cannot, as a matter of principle, forego its class economic program. On the other hand, the accumulating forces of nationalism, particularly in the Ukraine, will not long be denied. It is, in the last analysis, in the possibility of raising up a new generation, born and bred in communism and dedicated to the realization of a new social order, that Mr. Batsell finds the strongest pillar and buttress for soviet rule. But there is always an undernote of skepti-

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cism, an acknowledgement of the indeterminateness of Russia's evolution.

This attitude Mr. Barbusse does not share. He comes to the plow, to open up the furrows of peace, with the enthusiasm of a crusader and the assurance of a pontiff: "Every year of the existence of the Soviet Republics has been marked by an unceasing and resolute struggle for peace, for the liberation of tortured humanity from the horrors of military catastrophes. In the whole eleven years' history of the Soviets no step has been taken that was not directed toward the effective realization of peace. Despite the innumerable international obstacles put in the way of the Soviet Union by its imperialist foes and opponents, it has never relinquished its aspirations towards peace, never lost an opportunity of demonstrating them, and never refused to take the initiative in advancing the affairs of peace." Such is the peroration to a most interesting analysis, written in M. Barbusse's lucid and inimitable style, of the divers moves made by Soviet Russia to further international peace. For peace, to the soviet government, means arriving at a system of stable relations between states, based on political guarantees of non-aggression and virtually complete disarmament. On such bases alone is durable peace possible in a world made up of communist and non-communist commonwealths.

M. Barbusse's exposé of some twenty pages forms merely a prelude to a systematic compendium of important documents throwing into clear relief the attitude of the soviet government toward peace from the November Revolution to the Kellogg Pact. The chief value of the compilation lies in its careful juxtaposition of related topics in such fashion that the views expressed from the Kremlin rather intermittently are given pattern by the thread of continuity. The first section, devoted to "The November Revolution and Peace," is perhaps the most impressive portion, giving in sequence and design the larger phases of Bolshevik policy as carried out in the days when other countries were hampered, by war censorship and psychology, in evaluating objectively the ideological importance of manifestoes and appeals. The most novel document in this section is the draft treaty negotiated by Bullitt with the soviet authorities. It is a striking commentary on the short-sightedness of the peace-makers of Paris that, being interested primarily in erecting the Genevan edifice, they unceremoniously rejected in Bullitt's proposal—on the whole more favorable to democracy and capitalism than were the clauses of the agreements entered into in the final

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Eastern peace—the principles of non-intervention and non-aggression which have since become the cornerstones of soviet security.

With the content of the documents on Russian participation in peace and disarmament conferences the general reader is, of course, more familiar; a careful perusal of those on the Kellogg Pact might have saved Mr. Stimson considerable embarrassment last December! It is much to be regretted that the last section, on pacts of neutrality and non-aggression, did not include the Russo-German conciliation treaty of 1929 and the agreements between Poland, Rumania, and Russia for the peaceful liquidation of disputes.

MALBONE W. GRAHAM.

University of California at Los Angeles.

The Chinese Revolution: A Phase in the Regeneration of a World Power. BY ARTHUR N. HOLCOMBE. (Cambridge, Mass.: Harvard University Press. 1930. Pp. xiii, 401.)

This book is both good and satisfying. It came as a result of an investigation made under the auspices of the Bureau of International Research of Harvard University and Radcliffe College "for the purpose of estimating the influence of the Chinese Revolution upon the international relations in the Far East." The main part of the book is a study of Chinese politics. The other parts are: an epilogue which contains Professor Holcombe's reactions and conclusions; a prologue which is fascinatingly descriptive of one Chinese city's revolutionary life, and characteristic of much of the whole of China; and a series of appendices containing Sun Yat-sen's will, his outline for national reconstruction, a chronology of the Chinese Revolution, the constitution of the Kuomintang, and other documents essential to an understanding of the essential principles of the Revolution.

Professor Holcombe spent several months in travel and investigation in China. The reader who knows his China will be happy to note that the author approached his study objective via Suez, Singapore, and Annam; thus the "shocks" of the Orient which come from new smells, strange noises, confusing tongues, and topsy-turvy customs had become commonplace by the time his investigations began. As a result, the book is splendidly free from tourist prattle, treaty port gossip, and luncheon club entertainment. Free also is the book from propaganda. The reviewer failed to find, even among the citations, reference to any-

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thing of a propagandist nature. This indeed is refreshing for books dealing with revolution.

The reportorial story of the investigation is informative and complete. It reflects earnest observation of the present and careful study of authors of the first order who have dealt with the fundamentals of the past. It is this characteristic which makes it necessary to describe the book as scholarly. That said, the reader must needs be reassured. Scholarship is present, but it is in no sense a blight.

Professor Holcombe has given us an excellent historical résumé, with not much of importance left out. In this we see restated in attractive narrative style what those who have understood things Chinese have pointed out before, but which the average writer or prejudiced observer could never see—that there has been as much confusion and uncertainty of action and policy on the part of the Powers dealing with China as there have been turmoil, instability, and downright chicanery on the part of those factions, parties, or persons who acted for China. Professor Holcombe kills, we hope forever, the assumption that political capacity is a racial characteristic; also, that duller academic fallacy that Europeans only may be termed political peoples.

One lays down the book with a feeling of encouragement. The reader is willing to accept Professor Holcombe's admonition not to compare the Chinese with Englishmen, Frenchmen, or Germans, but with Europeans; and the comparison is not so disadvantageous to China, even from a political standpoint. China is certainly not a political unit; but neither is Europe. "It may take a long time for the Chinese to complete the reconstruction of their state. Or the work of reconstruction may be on the verge of making rapid progress. In either event, the course of the Revolution indicates that there is no policy more promising in the long run for the tranquility of the Far East and the peace of the world than the exercise of the necessary patience and forbearance by the Powers while the Chinese themselves set their own house in order. Statesmen who look beyond the next presidential campaign or ministerial crisis at home and all forward-looking people everywhere will justify this policy by their confidence in the political capacity of the Chinese" (p. 347).

ELBERT D. THOMAS.

University of Utah.

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A History of Nationalism in the East. By Hans Kohn. Translated by Margaret W. Green. (New York: Harcourt, Brace and Company. 1929. Pp. xi, 476.)

The appearance of nationalism as a factor of real importance in the East is a relatively recent development, but already its effects have been so widespread and multifarious as to make it a matter of the greatest difficulty for the student of Oriental and Near Eastern affairs to get a comprehensive picture of the movements. For this reason, the translation of Dr. Kohn's *Geschichte der nationalen Bewegung im Orient,* which appeared in Germany in 1928, is warmly to be welcomed. If it cannot be accepted as a definitive work on the subject, it at least brings together between two covers a mass of material which stood in increasingly urgent need of coherent treatment.

The scope of the work is limited, despite the broader implications of its title, to the territories stretching from Egypt to India. Dr. Kohn takes only passing notice of the nationalisms of China and Japan at one extreme of his arbitrarily imposed limits and of the North African areas, to the west of Egypt, at the other. A further limitation to which the author has adhered less rigidly than to these geographical boundaries is contained in the prefatory statement that he "does not seek to recount the history of the countries and peoples concerned, but rather, as far as is possible in relation to the immediate past, to trace the main lines of evolution in the history of political thought." In fact, the bulk of the work is concerned less with the development or analysis of political ideas than with an outline of historical events, occasionally running to considerable detail.

An interesting conception, developed at some length by Dr. Kohn, is that the nationalist movements of the East have been preceded by a religious revival or reformation, similar in nature and effect to the Reformation in Europe. Although the Orient did not form a religious unit, he holds that "everywhere its fundamental attitude toward religious questions was the same;" at all events, the whole structure of social and intellectual life was based on the foundation of religion, whether it was that of Islam or that of the Far East. In the immediate past, he maintains, nationalism has supplanted religion as the governing principle in the East, as it did in Europe from the eighteenth century onwards.

The present force and direction of nationalism in the East Dr. Kohn

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believes to be derived from two main sources: the joint and ultimately self-contradictory pressure of British imperialism and education (taken broadly as the influence of British ideals) on the one hand, and, on the other, the influence and direct support of Bolshevist Russia. In the latter connection, it might perhaps be suggested that he has taken somewhat too much at face value the professions by the Soviet leaders of disinterested affection for the oppressed masses of the East. He quotes Stalin as writing that, "regarded objectively, the struggle of the Emir of Afghanistan for his country's independence is a revolutionary struggle, notwithstanding the fact that the Emir and his ministers are monarchists; for it is undermining imperialism." But this aspect of Bolshevist policy Dr. Kohn has rather neglected.

How deep into the masses this modern nationalism has sunk, the extent to which it may properly be regarded as a popular movement, are problems to which Dr. Kohn has scarcely given adequate consideration. Have the older and essentially unreformed faiths still a solid grip on the multitudes, or have they in fact been supplanted by the nationalist principle? Relying for the most part on literary sources—that is, the speeches and writings of the religious and political leaders of the East—rather than on personal investigation in the several areas, Dr. Kohn appears, on the whole, to overestimate the change that has come over the psychology of the Orient. Oriental nationalism is surely a force to be reckoned with, but it is at least doubtful whether the political psychology of the Western world has as radically transformed the Orient as its Western-trained leaders might lead one to believe.

RUPERT EMERSON.

Harvard University.

The United States and the World Court. By PHILIP C. JESSUP. (Boston: World Peace Foundation. 1929. Pp. 159.)

This World of Nations. By PITMAN B. POTTER. (New York: Macmillan Company. 1929. Pp. 366.)

In his *The United States and the World Court,* Professor Jessup presents an authoritative account of the negotiations attendant upon the consent of the Senate of the United States (with reservations) to adherence to the Permanent Court of International Justice, January 27, 1926. The willingness of members of the Court to make every possible effort to meet the reservations is depicted in a careful way,

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each of the reservations being treated separately and in detail. The voluminous documentation, in appendices, presents, within one cover, an admirable survey of the entire situation surrounding the relationship of the United States to the Court. A wide reading of this book should help marshal public opinion in support of favorable action by the Senate, particularly as Professor Jessup confines himself entirely to the explanation of facts, without recourse to debate to prove the case.

This World of Nations will appeal to those who desire a non-technical, yet reasonably comprehensive, discussion of contemporary world problems. It might admirably meet the needs of popular study groups which desire to spend a meeting each upon such subjects as the relation of geography to world politics, the development of international law, the nature and activities of diplomatic service, the purpose and procedure of treaty-making, the foreign policy of the United States, arbitration as a cure for the ills of the world, the growth of the conference method of handling international problems, the nature and causes of war, the prospects of world peace, the origins and structure of Pan-Americanism, and the organization and activities of the League of Nations. It may be wondered that so much could be included within 366 pages, but it is evident that the book makes no attempt at exhaustive treatment, intended as it is for the enlightenment of casual readers.

W. LEON GODSHALL.

Union College.

BRIEFER NOTICES[1]

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

The Treaty Veto of the American Senate (Putnam's, pp. vi, 325), by Denna Frank Fleming, gives a full account of the part taken by the Senate in the consideration, rejection, and amendment of treaties. Beginning with the debates upon the treaty-making power in the Constitutional Convention, the author traces the exercise of this authority through the years. The material is presented topically under heads such as: treaties rejected by the Senate; arbitration treaties; treaties of peace; and the struggle over the League of Nations. Five chapters are very wisely given over to a discussion of the Senate and

[1] In the preparation of the Briefer Notices, the editor in charge of book reviews wishes to acknowledge the assistance of Dr. E. P. Herring.

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foreign relations in the post-war period. The presentation is well organized, judiciously balanced, and well-tempered. The discussion is so orientated as to bring the Senate's past record and recent decisions to bear upon the important question as to the amount of weight this body should have in the control of foreign affairs. Quantitatively viewed, the number of treaties rejected by the Senate has not been great; but this does not mean that senatorial influence has been negligible. One's attitude as to the Senate's wisdom depends in large measure on one's opinion upon the particular issue involved. Professor Fleming, however, comes to the general conclusion that "the Senate retards unduly the peaceable adjustment of international relations." He then propounds this timely question: "Because a dozen men in the days of the sailing vessel and the ox cart thought that international agreements should be few and difficult to make, must we ever remain in the days of air travel and television—and beyond—at the mercy of any determined group of men in the Senate who happen to decide to block the way of progress?" This excellent study is concluded with a consideration of the various alternatives offered as a means of reducing the Senate's treaty veto power. The author presents an interesting and convincing case for lessening the Senate's authority in the ratification of treaties.—E.P.H.

The Fred Morgan Kirby Lectures delivered at Lafayette College in 1929 by Professor William Bennett Munro have been published by the Macmillan Company in a recent volume entitled *The Makers of the Unwritten Constitution* (pp. 156). After an introductory chapter explaining the expansion of the Constitution through usage and tradition, the author singles out four figures of outstanding and enduring importance in the making of our fundamental law. The high spots are summarized as follows: "Hamilton took hold of the economic provisions, gave them reality, and made them function . . . . Marshall, during his long term as Chief Justice, reinforced Hamilton's work by widening the implied powers of the national government and making the Supreme Court their guardian. To Andrew Jackson we are indebted for having infused into the American political system a large part of the democracy which the framers of the original document did not intend it to possess. Finally, Woodrow Wilson demonstrated the latent powers of the chief executive and set presidential leadership upon a new plane." This material is developed in a light and lucid fashion that is all the more vivid because of the linking of personality

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with abstract idea. The book is to be read for its emphasis upon significant constitutional developments rather than for its attention to detail. As popular lectures, the characterizations must have been singularly felicitous.

The Tragic Era, by Claude G. Bowers (Houghton Mifflin Company, pp. xxii, 567), is an unusually interesting book which holds the attention of the reader from beginning to end. It deals with the twelve-year period following the death of Lincoln. As stated by the author, "these were years of revolutionary turmoil, with the elemental passions predominant, and with broken bones and bloody noses among the fighting factionalists. The prevailing note was one of tragedy, though, as we shall see, there was an abundance of comedy, and not a little of farce. Never have American public men in responsible positions, directing the destiny of the Nation, been so brutal, hypocritical, and corrupt. The Constitution was treated as a doormat on which politicians and army officers wiped their feet after wading in the muck. . . . . So appalling is the picture of these revolutionary years that even historians have preferred to overlook many essential things. Thus Andrew Johnson, who fought the bravest battle of constitutional liberty and for the preservation of our Constitution ever waged by an Executive, until recently was left in the pillory to which unscrupulous gamblers for power consigned him, because the unvarnished truth that vindicates him makes so many statues in public squares and parks seem a bit grotesque. Even now, few realize how intensely Lincoln was hated by the Radicals at the time of his death. A complete understanding of the period calls for a reappraisal of many public men. . . . . I have sought to recreate the black and bloody drama of the years, and to show the leaders of fighting factions at close range, to picture the moving masses, both white and black, in North and South, surging crazily under the influence of the poisonous propaganda on which they are fed." These quotations are sufficient to give some conception of the author's point of view and of the method of treatment by which he has undertaken "to recreate the atmosphere and temper" of the period. Newspapers, memoirs, and biographies of the time have been used freely, and the author had access to the unpublished diary of George W. Julian, which covers the entire period. The book is full of illustrative material that should be of help to the teacher of American government and politics.

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Thomas Beer, the author of *The Mauve Decade,* presents in *Hanna* (Alfred A. Knopf, pp. xi, 337) the picture of the pyrotechnic political period within which his hero, Mark Hanna, schemed and triumphed. The book is more than the story of a man; it is a novelized chronicle of political events from Lincoln's assassination to that of McKinley. For those who must have their history and politics presented in the guise of a story deftly and brilliantly recounted, Mr. Beer's book will be welcome reading. The biography is vivid, the style easy and epigrammatic, the method rambling and indirect, the general effect graphic. Here is an exploitation of the entertainment value of Mark Hanna and his contemporaries.

In his recent book, *The Other Side of Government* (Charles Scribner's Sons, pp. xii, 285), David Lawrence points out that "too much emphasis is put on the regulatory side of government." The technician as well as the politician has a place. "The government of the United States is the biggest business in the world." The author develops his material from this point of view, demonstrating in turn the various services performed by the federal administrative bureaus. These chapter headings are indicative of the general tenor: Elimination of Waste, Reorganizing Agriculture, River Control, Food Inspection. This book is frankly a popular exposition intended to give the layman an insight into government as an instrument of sympathetic coöperation in solving national problems.

Party Government in the United States (Princeton University Press, pp. 68) consists of two addresses by John W. Davis delivered under the Stafford Little lectureship. The style is, of course, flowing and the material familiar; the chief interest lies in Mr. Davis' personal reflections upon the political scene, which may be inferred here and there. The direct primary comes in for small praise.

FOREIGN AND COMPARATIVE GOVERNMENT

England, by Wilhelm Dibelius, professor of English in the University of Berlin (Harper and Brothers, pp. 569), is a notable book. As A. D. Lindsay points out in his introduction to the English translation, the study was intended "to help the German people to understand the people with whom they have been fighting." But much more than this is accomplished: the author has succeeded in portraying the British in

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a judicious and penetrating fashion that leaves no important aspect of their characteristics or institutions obscured. The background of history, the country, the people, the constitution, the church, education, are among the topics discussed with understanding and from a fresh point of view that is very enlightening. There is keen comment, but no attempt at mere cleverness. The book has been compared to Bryce's *American Commonwealth,* and not without justification. Because of its scope and variety, it is difficult to sum up such a volume in a few sentences. It must be read to be appreciated.—E. P. H.

G. F. M. Campion's *An Introduction to the Procedure of the House of Commons* (London: Philip Allen and Company, pp. 308), by one of the assistant clerks of the British House of Commons, is something more than a manual of first-aid for new members. It presents a complete account of the procedure of the House on a scale midway between the official *Manual of Procedure* and May's classic *Parliamentary Practice.* It contains, in addition to a singularly lucid and precise explanation of procedure, much useful information about such matters as the privileges of the House, the duties of its officers, the classification of parliamentary papers, and the arrangement of the Chamber itself. To the student of government, the value of the book is enhanced by a clear account of the actual distribution of the time of the House among the different kinds of business. It is a book which will greatly assist the teacher of political science in making clear the intricacies of the practical operation of parliamentary government in its original home.—A. N. H.

With the same criteria that he employed in discussing the United States, André Siegfried turns his attention to his native country. The results were presented in a series of lectures at the Williamstown Institute of Politics, and are now published by the Yale University Press in a volume entitled *France, a Study in Nationality* (pp. viii, 122). As the basis of his essay, the author takes the viewpoint that "French politics happen to be less than anything else adapted to the preoccupations which are now dominating the world." Bluntly put, the antithesis seems to be between a cultural France and a materialistic world. Can the former retain its individualistic creed in a collectivistic age? "We lavish our best energies on this doctrine of individualism, which accounts for the rather inefficient material achievement of our de-

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mocracy, such things not being its real aim. . . . . Our democracy is Latin in origin, and therefore unlike the Anglo-Saxon democracies, where practical social accomplishments are the first consideration. Their program is to increase the comfort and material welfare of mankind, but they do not worry very much about its intellectual freedom. . . . . What do we wish the community to stand for, the individual or production?" To Siegfried there can be but one answer: the French attitude, despite its probable social inefficiency, "justifies itself by an instinctive and a persistent determination to safeguard the individual." From this philosophic point of view, the author takes up in turn the French character, politics, parties, and groups in the legislative chamber.

Comte Louis de Lichtervelde's *Leopold of the Belgians* (Century Company, pp. 366), translated by Thomas H. Reed, will probably be, for a long time to come, the accepted treatment of the career of the second Belgian king, for it is written by a well-informed and understanding young Belgian who has already played an important part in the political life of the country. That Leopold, like all three of the Coburg rulers of Belgium, was an able man, no one will deny. If all the kings of European countries in the nineteenth century had been as adaptable as the kings of Belgium, there would undoubtedly be fewer republics on the continent today. Lichtervelde makes much of the evolution of the Belgian constitutional régime and the working of the royal influence, and the student of politics can learn much from this volume as to the ways and means by which the monarch can control and guide affairs even without overstepping his prerogatives. All this comes out most clearly in the story of the acquisition of the Congo by Leopold, almost in the teeth of general opposition in the country to a policy of colonial activity. It must be admitted that Lichtervelde, in his effort to vindicate Leopold in this matter, shows a strong tendency to lean over backward. Too much stress is laid upon the cleverness of the king and far too little consideration is given to the peculiar international situation in 1885 which made it relatively easy for Leopold to score a success. The king of the Belgians was undoubtedly a remarkable man, but to class him with Bismarck is going too far, and to try to whitewash his native policy in the Congo is apt to be a hopeless task.—W. L. L.

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Whatever one may think of textbooks in general, it must be admitted that there is a special *raison d'être* for a book which attempts to summarize the developments of the past fifteen years in a popular and easily understandable fashion. Apart from the needs of the college student, there must be a considerable demand among laymen for a reliable manual to serve as a background for the study of current affairs. *Europe Since 1914,* by F. Lee Benns (F. S. Crofts and Company, pp. 671), should fill this need admirably, for it is well proportioned and well informed, as well as being detached and unprejudiced. The general reader will find here all that he needs to know in order to follow the events of the day with intelligence. The black and white maps are simple and clear, and the rather extended bibliography contains ample suggestions for further reading. Of course the magnitude of the subject leads to problems which are frequently hard to solve to the satisfaction of everyone, and this is particularly true of the problems of arrangement. Without trying to find fault, it may be asked why it is necessary to enter upon a discussion of the affairs of Afghanistan, India, and China, when almost nothing is said of the effect of American policy on European affairs. Then again it may be questioned whether it was wise to separate the reparations question from a discussion of the domestic development of Germany after the war, or, for that matter, from the consideration of the problem of French security. It is in the coördination of material and in the study of interactions that the book is weakest, although the final chapter, in which the economic and social problems of post-war Europe are discussed, is the most adequate single part of the volume. —W. L. L.

Panait Istrati, the well-known author of the series "Les Recits d' Adrien Zograff" for which the name of "Maxim Gorki of the Balkans" was given him, has emerged with renewed force in three volumes entitled *Vers l'Autre Flamme! Après Seize Mois dans l'U.R.S.S.* (pp. 284); *Soviets 1929* (pp. 213); *La Russie Nue* (pp. 334) (Paris: Les Editions Roeder). His trip to Russia in October, 1927, and his stay there for sixteen months, during which he traversed all Soviet Russia, west and east, south and north, provided Istrati with a new field of observation, from which he extracts impressions and conclusions of unique richness and forcefulness. The first volume is a confession of the dis-

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appointment and defeat that his previous faith in the Revolution and Soviets suffered in Russia. His conclusion is that Russia aspires to a bourgeois society, as all nations that come out of a patriarchal life, and that it was a great misfortune that the attempt to establish a socialist state occurred in Russia. The second volume describes, with a calmness which is not in the Istrati style, the political life in Russia and brings out the domination of this life by an overpowering bureaucracy and a tyrannical minority. The last volume gives a picture of the life of the people of Russia, the every-day life of the worker and peasant, in a way that certainly was never given before. The author traveled in Russia as a *persona grata* of the Soviets, yet he lived among the common people as one of them. He has seen Russia with the eyes of a man who cared for truth, for the happiness and emancipation of the workers and peasants, and not for dogmatism and "official" information. And he cries out his disappointment, and often his indignation—for instance over the treatment of women. His material is derived from direct observation and from publications in communist papers in Russia. His presentation is most vivid and his insight admirable.—S. P. L.

Lenin, The Iskra Period, 1900-1902, Books I and II (International Publishers, pp. 336, 317) is Volume IV of the Collected Works of V. I. Lenin, edited by the Lenin Institute in Moscow in an authorized English translation. As is well known, this series brings together the writings and speeches of Lenin from 1893 to 1923. The present volume covers the period during which the *Iskra* and the *Zarya* were founded and published by Lenin and his group in Switzerland as the militant and theoretical organs, respectively, of Russian Marxism. A series of articles written by Lenin on the agrarian question in Russia is of special interest in view of the present situation in the country. The outstanding document is a long paper which was first published as a separate pamphlet in 1902 under the title *"What is to be done?"* This document is a synthesis of Lenin's basic ideas on the revolutionary movement and had a great influence in directing that movement. All through the volume one sees the ruthless dogmatism of Lenin and his impatience with people who chose a road in Russia or other countries which was not in strict harmony with Marxist revolutionary theory.

In *The Dilemma in India* (Constable and Co., Ltd., London, pp. xviv, 379), Sir Reginald Craddock has given outspoken and detailed

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expression to the views of the Indian civil servants of the die-hard persuasion. His term of service in India covered a period of nearly forty years, under nine viceroys, and included the headship of two provinces and a seat in the executive council of the governor-general. Mincing no words, he professes a scorn for the Indian Swarajist politicians second only, perhaps, to his scorn for the Bolsheviks and all their works; and he derives from his lengthy experience with Indian affairs the conclusion that dominion status and independence almost equally spell a chaotic ruin for an India torn by internal faction and led, for the moment at least, by self-seeking radicals quite incapable of intelligent or trustworthy leadership. The Morley-Minto reforms are accepted as having been a legitimate and proper advance, but the reforms of 1919 are condemned as a tragic misstep, since their success depended upon the creation of a sense of responsibility where none might be expected. In conclusion, the author suggests the outlines of an Indo-British dominion in which the steel frame of British control remains the predominant factor.—R. E.

The first volume of the fourth edition of *Les Constitutions Modernes,* by F. R. Dareste and P. Dareste, as revised by Joseph Delpech and Julien Laferrier (Paris: Sirey, pp. xxxvii, 670), has been published. For nearly fifty years this collection of modern constitutions has met the needs of scholars, and the new edition will continue the traditional service. Professor Chavegrin of Paris writes the brief but suggestive preface, in which he reviews the principal types of governmental organization. A general bibliography follows, listing chronologically some forty collections of constitutional texts. The editors' collection starts with France, and this volume covers (alphabetically, in French) the European states from Albania to Greece inclusive. The more important texts appear in full; the less, in extracts and paraphrases. All are in French. To each is prefixed an historical note and a special bibliography. A map of no great value and a table of contents complete the volume. Unfortunately, the index for all the European constitutions is postponed to the end of the second volume. If it proves to be adequate, it will put the edge on a most useful tool of research.

Political Handbook of the World; Parliaments, Parties, and Press as of January 1, 1930 (Yale University Press, pp. 198), edited by Walter

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H. Mallory and published under the auspices of the Council on Foreign Relations, is the latest issue of an annual volume which has become indispensable to scholars, writers, and editors concerned with current political affairs. The most useful features of the manual are the lists of political parties, with their leaders and programs, and of newspapers, with political affiliations and names of editors or proprietors. The latter list is planned to include mainly papers that are frequently quoted abroad, omitting some of large circulation and large influence locally.

The United States of Europe (Willett, Clark, and Colby, pp. 225), by Paul Hutchinson, is a journalist's view of the probability of a United States of Europe. It is based on a summer's trip through western Europe, with a sojourn at Geneva, during which time the author interviewed many "leaders of European opinion." The book concludes with a strong endorsement of Briand's plea for the formation of a United States of Europe.

INTERNATIONAL LAW AND RELATIONS

The essay, *The Exterritoriality of Ambassadors in the Sixteenth and Seventeenth Centuries* (Longmans, Green and Co., pp. 262), by E. R. Adair, takes the form of a brief in which the author defends the historical method as opposed to that of the jurists—not an altogether novel thesis nor convincingly expounded. Although Mr. Adair acknowledges the danger of "trying to give a historical basis to what is, after all, predominantly a legal subject," and although he is aware of the lack of a legal training that "may have led me into error," he nevertheless proceeds at once to the attack. Few lawyers in the centuries separating Gentilis from Fauchille are spared. The essay, dealing as it does with a legal subject, suffers somewhat in balance and coherence from the lack of a philosophical framework. Sovereignty, with its implications, is, for example, ignored. On the other hand, the author has devoted an over-abundance of space to the significance of practices and precedents in the evolution of exterritoriality, a rather obvious point upon which there is little disagreement. There is ample evidence of the author's acquaintance with the historical background of that period, and if the legal implications of exterritoriality have been somewhat neglected, the book nevertheless gives an interesting

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account of the position of ambassadors in the sixteenth and seventeenth centuries. Among the points considered is the immunity in theory and in practice of the ambassador from criminal jurisdiction, civil jurisdiction, and from what is termed local jurisdiction. Several chapters, also, are given over to the immunity of the ambassador's suite and to the inviolability of the ambassador's residence. There is, in addition, an account of the *franchise du quartier*—the notorious abuse of exterritoriality by ambassadors during the early period.

The volume issued by the Royal Institute of International Affairs as the *Survey of International Affairs, 1927,* by Arnold J. Toynbee, is more general in scope than other recent volumes of the Institute. After a discussion of world security and disarmament, 1922 to 1927, there are set forth the European situation, 1925 to 1927, the movements in Chinese politics to December, 1927, and affairs on the American continent, except in the United States. All of this is done in about 525 pages, and the work of presenting clearly the kaleidoscopic political changes is well done, particularly for China and Mexico. The influence of Italy and the U.S.S.R. shows the growth of new factors in European relations. While surveys of this type must rest to a large degree upon current newspapers and journals, there are about twenty-five pages of treaties, thirty-five pages of chronology of events and treaties, a carefully prepared index, three maps illustrating Chinese affairs, and a map of the world on Mollweide's projection. Like the other *Surveys* since that of 1920-1923, this volume is from the Oxford University Press. The Institute has also issued a volume entitled *Documents on International Affairs, 1928* (pp. xiii-254), under the editorial supervision of J. W. Wheeler-Bennett. The text of the Kellogg Pact and various treaties, with reservations, interpretations, and comments, are presented in English. What is more serviceable, because often difficult or impossible to obtain, are many important speeches, notes, resolutions, communiqués, and similar documents, such as those relating to reparations and to conditions in Europe, America, Asia, and Africa.—G. G. W.

In a somewhat general characterization, the *Survey of American Foreign Relations, 1928,* by Charles P. Howland, might be said to have focused attention on the American factors of the survey. The *Survey of American Foreign Relations, 1929,* by the same author (Yale University Press, pp. 521), emphasizes the foreign factors, particularly

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as evident in relations with the states of the Caribbean and of Central America. This part of the volume covers 330 of the 521 pages. The remaining pages of text are given to the World Court, the Pact of Paris, and immigration. The World Court and the Pact of Paris are chapters under Section II, "International Organization," though it requires liberal interpretation to put the Pact of Paris under the technical head of international organization. The index is excellent, and after five years a cumulative index would be very serviceable, even though there should be in each successive volume the table of contents of preceding volumes. The Council on Foreign Relations has in this volume for 1929 made another valuable contribution to the understanding of American policies and has maintained the standard of the volume of 1928.—G. G. W.

The United States of the World; a Comparison Between the League of Nations and the United States of America (Putnam's, pp. x, 284), by Oscar Newfang, first examines this country under the Articles of Confederation and compares our situation with the League of Nations in its present form. The author then points out how the improvement in governmental forms under the Constitution removed war causes within the nation and made for prosperity generally: ergo, the structure of the League must be strengthened if it is to be an efficacious agency. Mr. Newfang proposes that "we should send some of our elder statesmen to suggest that the federal form of organization, which proved workable for over a century in this country, and for a shorter period in many other countries of the world, should be applied to the United States of the World." While some of the comparisons in structure and organization between the League and the United States are interesting and pertinent, one cannot ignore the different context of the problem of coöperation within the two spheres. World politics have hardly advanced to the point where the internal mechanics of a super-state are a matter of immediate concern. Mr. Newfang's study is suggestive, although his comparisons seem overdrawn.

John F. Cady, in *Foreign Intervention in the Rio de la Plata, 1838-50* (University of Pennsylvania Press, pp. xiii, 296), presents a careful, well-documented study of the British-French struggle for position in the La Plata region in the time of the tyrant Rosas. Rosas still appears as cruel and irresponsible, but as a person of exceptional

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shrewdness who keeps impotent both the Argentine factions and the representatives of the intervening powers. His defense of "the American policy" is in strong contrast to the inaction of the United States. The allies in the intervention stand in no favorable light, but the British come off better than the French. The government at home, the diplomatic representatives, the naval authorities—all fall into disagreements which make any consistent program impossible. British aims were commercial, but French ambitions looked toward a political, if not a territorial stake, in the New World. A French colony at Montevideo would have been very acceptable. Its prevention was due to British—not to American—action. The Department of State was silent until the result was at hand, and the chief contribution of its representatives was bombast.—C. L. J.

America and England? (Jonathan Cape and Harrison Smith, pp. x, 254), by Nicholas Roosevelt, offers a readable but superficial appraisal of the relative positions of the United States and the British Empire in the world today. In Great Britain today the author finds indications of "a mortal disease of the soul . . . . a combination of sloth, resistance to change, blindness, defeatism, and excessive temporizing which suggests a sick or an exhausted civilization." No American secretary of state since 1914, in Mr. Roosevelt's opinion, "has had a knowledge and an understanding of international politics." The reader's acceptance of these and other sweeping generalizations will not be promoted by the author's locating Cape Finisterre in France (p. 141), nor by his assertion that "Great Britain managed to avoid armed intervention in Europe between the Napoleonic wars and 1914" (p. 221).—J. P. B.

Lieutenant Louis Guichard, a French naval officer attached to the Historical Section of the French Ministry of the Marine, has made a notable contribution to the history of the World War in his monograph, *The Naval Blockade, 1914-1918,* which has been translated and edited by Christopher R. Turner (D. Appleton & Co., pp. xviii, 321). In Part I, "The Conduct of the Economic Naval War," the author throws fresh light on the divergent views of France and Great Britain as to the treatment of neutrals, utilizing a considerable body of new material drawn from the French naval archives. Parts II and III trace the effects of the restrictive measures on both the neutrals and

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Germany. The author emphasizes the drastic treatment of the neutrals by the United States after its entry into the war, and the strengthening of the economic pressure on Germany, thanks to American control of essential raw materials. With both the legal and economic problems raised by the new methods of warfare Lieutenant Guichard has dealt with a sure hand and with notable detachment, paying a warm tribute to the bravery with which the German people bore the rigors of the protracted economic siege.—J. P. B.

Air law has developed rapidly. In Professor Carl Zollmann's *Cases on Air Law* (West Publishing Co., pp. xii, 540), nearly all the cases are of dates subsequent to 1900 except a few referring to balloons, and a large per cent of the cases were decided since 1925. The cases relate both to aviation and radio, and to administrative rulings as well as court decisions. The range of topics is wide. Trespass, insurance, liens, torts, contracts, unfair practices, and many other topics find illustration. Many of the cases necessarily show that air law is still in an early stage, and the rulings and decisions are in a measure tentative. Appendices contain the Air Commerce Act of 1926, Uniform State Law of Aëronautics, and the Radio Act of 1927. There is a list of cases and an index.

Advance plans for the Kyoto Conference of the Institute of Pacific Relations included the preparation of a number of books dealing with problems of the Pacific, Manchuria, and other subjects appearing on the agenda of the meeting. It fell to the competent hands of Professor George H. Blakeslee, of Clark University, to draw up for the American delegation a general review of Pacific and Far Eastern affairs; and the result was *The Pacific Area; an International Survey* (World Peace Foundation, pp. 224). Six crisp chapters are devoted to a résumé of the historical development and existing status of China's unequal treaties (considered generally), China's relations with individual powers, Manchuria, Japan's foreign relations, the British dominions in or bordering the Pacific, and agreements for preserving peace in the Pacific. The material is necessarily factual rather than interpretative; and by way of further equipment for the student of Far Eastern matters, an appendix of upwards of a hundred pages presents the essential documents.

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The League of Nations, by H. Wilson Harris (pp. 127), is a title in a "New Library" of inexpensive books inaugurated by Jonathan Cape and Harrison Smith. The little volume sets forth in very brief but accurate and attractive form the essential facts concerning the League: its beginnings and aims, its working mechanism, its technical tasks and humanitarian work. Mandates, armament, and the preservation of peace are discussed, and the book concludes with an estimate of this agency for international coöperation. The primary facts and acts of the League may be thus absorbed as easily as a sugar-coated pill. A book for the tired freshman!

Another of Mr. J. W. Wheeler-Bennett's convenient volumes is always welcome. The present one, *Information on the World Court, 1918-1928* (London, Allen & Unwin, pp. 208), is issued with Maurice Fanshawe as joint author and is introduced by Sir Cecil Hurst. In addition to introductory chapters on the evolution of the Statute of the Court, the election of judges (brought down to date), and the judgments and advisory opinions (with a brief outline of each), there is a verbatim comparison of the draft of the Committee of Jurists and the Statute adopted by the First Assembly. There is a useful brief chapter on the United States and the Court which brings the account through the Protocol of March, 1929; also a large number of documents which will prove helpful to anyone desiring first-hand material on the history and organization of the Court.

Rudolf Pahl's *Das völkerrechtliche Kolonial-Mandat* (Otto Stolberg Verlag, Berlin, pp. 223), is introduced by a description of the development and final formulation of the plan for mandates. From the point of view of international law, Dr. Pahl proceeds to discuss the system as to its general basis, the question of sovereignty over and the legal nature and essence of the mandate, changes in and end of the mandatory relationship, the relation of the League of Nations to the mandates, their legal position, the question of citizenship of the natives of mandates, and related topics. The book is a careful, though relatively brief, legal study of the subject, with good references in the footnotes and a helpful bibliography. English quotations, unfortunately, are marred by rather numerous misprints.—J. B. M.

The Position of Foreign States before French Courts (Macmillan, pp. xii, 42), by Eleanor W. Allen, shows that French jurisprudence

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admits the principle of state immunity generally, and that despite some criticism of the doctrine, this position is in accord with accepted principles. Claims for military requisitions and torts by British and American forces in France were by convention referred to the local courts and defended by the French government, the allied governments agreeing to satisfy judgments so rendered.

The United States and the Caribbean (University of Chicago Press, pp. xi, 230), the second of a series of small volumes on American foreign policies published by the Chicago Council on Foreign Relations, contains three scholarly and suggestive essays by Chester Lloyd Jones, Henry Kittredge Norton, and Parker Thomas Moon, with a brief bibliography.

POLITICAL THEORY AND MISCELLANEOUS

Henry Holt and Company have published a posthumous volume by J. Allen Smith, late professor of government at the University of Washington, under the title of *The Growth and Decadence of Constitutional Government* (pp. xvii, 300). "If popular government is to free the world, it must exercise such self-restraint as may be required to keep it from encroaching on the rights of individuals. This, however, cannot be ensured by formally proclaiming these rights in a written constitution. Such self-imposed checks are wholly ineffective unless they are supported by a public opinion so clearly defined and so active that no government could afford to antagonize it." But the people have been content with the belief that "the government, even though it might wish to disregard the constitution, is powerless to do so." Public officials, shielded by this fiction, have been able to exercise a freedom incompatible with true constitutional government. Centralization of administration, the concept of the sovereign state, and the supremacy of the federal government have rendered popular control ineffective, even in the exercise of functions which democratic theory clearly assigns. Accordingly, what the world needs is "a new type of political philosophy—one which will combine the basic ideas of democracy with adequate provision for progress, political, economic, and social." A change in attitude, rather than a reform in institutions, is important. The author's treatment of the causes and growth of constitutional government recalls his earlier volume on *The Spirit of the American Government*. The trend that scholarship has fol-

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lowed since that influential book appeared has rendered the present study somewhat superogatory. The late Professor Smith held to a progressive viewpoint and in this posthumous work stands as the advocate of the people against the interests and of popular sovereignty against governmental supremacy.—E. P. H.

The Essentials of Democracy, by A. D. Lindsay (University of Pennsylvania Press, pp. 82), contains five lectures delivered by the Master of Balliol at Swarthmore College. To the American reader it will seem that the author devotes too much attention to the demolition of men of straw. Democracy may be understood in modern Europe as a process of government which implies the consent of the governed to the specific acts of those who are charged with the conduct of public affairs. But this has never been a widespread opinion in America. Our Declaration of Independence stipulates that governments should derive their just powers from the consent of the governed, but this doctrine of consent does not require that each act of governmental power shall be contingent upon the consent of the governed. The American reader will find a more serviceable analysis of the problem of democracy in America in Professor Edward M. Sait's Pomona lectures, recently published under the title *Democracy*. Dr. Lindsay has nevertheless rendered American scholarship a solid service by his discriminating treatment of the essentials of democracy. The importance of appropriate procedure for government by discussion, and of active participation by all citizens in the process of discussion, is duly emphasized in pages marked by exceptional lucidity of thought and elegance of diction. These lectures should help to stimulate the systematic study of governmental structures and processes with a view to the better adaptation of democratic institutions to the changing circumstances of the "Great Society."—A. N. H.

Henry Holt and Company have added to the Home University Library a volume by F. Melian Stawell, entitled *The Growth of International Thought* (pp. 248). The author glances back through history and examines the succession of thinkers who have looked beyond the bounds of their community and considered coöperative relations with their neighbors. Clearly it would be straining the present meaning of the word "internationalism" to go back to the Amphictionic League of the ancient Greeks or the imperial unity of Rome in a search for

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this concept. One might also question whether the current "world-mindedness" can be taken as the outcome of a continuous growth of an idea through the ages rather than as the result of modern economic interdependence. With such mental reservations as a preliminary, however, the reader will find in Mr. Stawell's essay a very engaging discussion of the hopes of empire, the aspirations of universal amity, and the plans of extra-nationalistic organization that caused some thinkers in all ages to take a broader view of the *milieu* and *mores* that hedged them about. The author is actuated by the conviction that "a sane nationalism, when it understands itself, points the way to internationalism as its completion. The principle that builds the single state cannot end with the single state." It is his belief that "this has been felt, sometimes clearly, more often dimly, by all the best thinkers of Europe." Dante, Marsiglio, More, Erasmus, Sully, Grotius, Penn, Rousseau, Burke, Kant, Goethe, and Napoleon are among the figures discussed. The aspects of their thought or actions bearing upon his topic the author has written up into a synthesis that places this book among the better volumes of the very satisfactory series to which it belongs.—E. P. H.

History of the Illinois State Federation of Labor (University of Chicago Press, pp. x, 580), by Eugene Staley, "aims to reveal the purposes, the problems, the methods, and something of the accomplishments of the state federation of labor as we find it in the American labor movement of today. It does so by tracing in detail the development of the Illinois State Federation of Labor, admittedly a leader in its field." The legislative work of the Federation is given particular attention. It is significant to note that as the Federation became "an influential and self-respecting organization" its interest in labor legislation increased and realization of a definite purpose was paralleled by the formulation of a program of desired laws. The author says of the Federation: "It has mainly sought to promote the legislative interests of labor in the state of Illinois, and from the convict-labor amendment of 1886 to the wage guarantee law of 1927 its efforts have undeniably been a potent factor in shaping the labor code of the commonwealth. Mr. Staley has presented a thorough and careful study of an important social and political agency. His book makes for a much clearer understanding of the process of labor legislation.

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Edward Eyre Hunt, editor of the report on *Recent Economic Changes in the United States,* has written a summary of the conclusions set forth in that voluminous survey. The limitations inherent in such a condensation are obvious. The bare statement of fact separated from the sustaining evidence and statistics is hardly an adequate treatment even for one who runs and reads, though it undoubtedly serves to indicate the general nature of the report proper. As an adjunct or a preliminary to the main work, the *Audit of America* (McGraw-Hill, pp. xxii, 203) is justified. Granting the deficiences of abbreviations, Mr Hunt's summary is a good one.

In *Studies in the History of American Law* (Columbia University Press, pp. 285), Professor Richard B. Morris has first synthesized and interpreted the main characteristics of the development of law in this country in the seventeenth and eighteenth centuries (in a chapter of 68 pages), and afterwards dealt in greater detail with three legal subjects which seem to have given rise to the largest amount of litigation in the centuries mentioned, namely, the distribution and alienation of land, married women's rights, and tortious acts. The latter studies break ground in the direction of a larger piece of research which greatly needs to be undertaken, dealing with the general matter of the transformation of the English common law in its new environment in the American colonies, and it is gratifying to know that Professor Morris contemplates further studies in this field.

In *The Method of Studying Law; a Critique* (G. A. Jennings Co., pp. 108), Professor Jacob H. Landman, of the College of the City of New York, argues that the case method, while useful in its day, has become "an anachronism" and should be displaced by the "problem method," which he explains and illustrates in an interesting chapter. The book is critical, constructive, and provocative.

On invitation of the presiding judge of the Municipal Court of Philadelphia, the Philadelphia Bureau of Municipal Research undertook in 1925 a full survey of the history and work of the court, and the first instalment of the findings has now been issued under the title *History and Functions of the Municipal Court of Philadelphia* (Thomas Skelton Harrison Foundation, pp. 102). The present publication is mainly of a narrative and descriptive character, criticism being deferred to later instalments.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

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CLARENCE A. BERDAHL
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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